



**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**

INVITATION FOR BIDS

IFB NO: 107F-23

REQUISITION NO: GR21104RIV

ERECTA STEP ROOF PLATFORM

Date Issued: May 31, 2023

**Bid Responses will be accepted through COMMBUY'S.**



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## 1. Introduction

The Massachusetts Bay Transportation Authority (“MBTA” or “Authority”) seeks the furnishing, delivery, and installation of an ErectaStep roof platform. To assist the MBTA in this effort, the Authority is issuing this Invitation for Bid (“IFB”) to solicit proposals (“Bids”) from qualified Bidders who can meet the project requirements stated herein.

**Bids will not be publicly opened for this procurement.** The buyer responsible for this procurement will post an Initial Bid Summary Form to [COMMBUYS](#) within two business days of the due date that will detail the number of bids received, each Bidder’s name, and the bid amount for bidders and the public to view.

For all inquiries, please contact the following point of contact and list the IFB number:

Buyer: Ian Atherton  
Email: iatherton@mbta.com

## 2. Instructions to Bidders

### 2.1 PROCUREMENT METHOD

This IFB will be launched and managed via [COMMBUYS](#). Instructions for log-in and use of [COMMBUYS](#) are described in reference material on the website and at <http://www.mass.gov/anf/docs/osd/forms/instructions-for-vendors-responding-to-bids.docx>

Bidders may also contact the COMMBUYS Helpdesk at COMMBUYS@state.ma.us or the COMMBUYS Helpline at 1-888-MA-STATE. The Helpline is staffed from 8:00 a.m. to 5:00 p.m. Monday through Friday (Eastern Time), except on federal, state, and Suffolk county holidays.

It is the responsibility of Bidders to maintain an active registration in COMMBUYS with a current email address and to monitor that email inbox for communications from the MBTA, including responses to Bidder questions. The MBTA and the Commonwealth assume no responsibility if a Bidder’s designated email address is not current, or if technical problems, including those with Bidder’s computer, network, or internet service provider (“ISP”) cause email communications sent to or from Bidder and the MBTA to be lost or rejected by any means including email or spam filtering.

Bidder shall review and study all documents thoroughly and report any discrepancies, omissions, technical queries, or other clarifications via COMMBUYS.

Questions and clarification requests submitted by Bidder will, together with MBTA’s response be made available to all Bidders via COMMBUYS.

### 2.2 PRE-BID CONFERENCE

There will be no pre-bid conference for this procurement.

### 2.3 DUE DATE AND DELIVERY INSTRUCTIONS

Bids are due by: 6/14/2023 at 2:00 PM, EST / EDT, for the work described herein. Bidder is required to prepare and submit all required documents to MBTA electronically via [COMMBUYS](#). **Bids will not be publicly opened for this procurement.**

Bidders are required to submit a Bid including all Bid forms contained in this package. Bidders shall



complete the **Enclosure 1 – Bid Cover Letter** and complete the check boxes to indicate the bid documents that constitute their bid.

**Note:** Bid packages that are received that do not follow instructions above may be disqualified. Please do not write anything additional on the package.

## **2.4 LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS OF OFFERS**

Late Bids will not be accepted.

Any modification of an offer, except a modification for “best and final” offer, is subject to the same conditions stated in this solicitation. At any time after submission of proposals and prior to the final selection of Bidders for contract negotiation or execution, the MBTA shall have the option to provide Bidders with an opportunity to provide a “best and final” offer and may limit the number of Bidders selected for this option.

Modification resulting from a request for “best and final” offer received after the time and date specified in the request will not be considered. “Best and final” offers will be accepted by email to the designated buyer.

Bids may be withdrawn only by written notice sent to the Authority at any time before award. In the case of Bid withdrawals or late Bids the MBTA will archive the Bid materials and will not return them to the Bidder.

## **2.5 CLARIFICATIONS OF SPECIFICATIONS**

Any request for clarification to, or relief from, the specifications, must be submitted the “Bid Q&A” tab in COMMBUYS. Such comments and questions may be submitted up to one week prior to the due date listed in Section 2.3 and shall: (i) identify the document; (ii) identify the relevant section number and page number) or, if it is a general question, indicate so; and (iii) not identify the Bidder in the body of the question or contain proprietary or confidential information. Questions submitted in any other format or method than that described above will not be considered.

Responses to requests for clarification or questions will be provided in writing and issued by the MBTA via COMMBUYS. In addition, the MBTA reserves the right to, in its sole discretion, not answer all questions submitted by Bidders.

It is the Bidder’s responsibility to verify the MBTA’s receipt of questions and clarification requests. Should the MBTA make changes to any specification, stipulation, requirement, or procedure, notification will be made to all Bidders in the form of written Addenda. No officer, agent, or employee of the MBTA is authorized to amend any provision contained in this solicitation, including the specifications, unless such amendment is issued as an Addendum and sent to all Bidders. If this solicitation is modified by an amendment, then all terms and conditions that are not modified remain unchanged.

## **2.6 MBTA STANDARD CONTRACT AND TERMS & CONDITIONS**

Bidders shall review and sign *Section 7.1 MBTA Standard Contract Terms and Conditions* to submit with their bid. Bidders do not sign *Section 7 Massachusetts Bay Transportation Authority Standard Contract* upon submission of their bid. When the MBTA plans to award a contract, the MBTA buyer will fill out *Section 7 Massachusetts Bay Transportation Authority Standard Contract* and send it to the successful bidder for signature. See *Section 6 MBTA Standard Contract and Terms and Conditions Instructions for Vendors* for further details.



The MBTA does not encourage attempts to negotiate the *Section 7.1 Massachusetts Bay Transportation Authority Standard Contract Terms & Conditions*. Many of these provisions are required by law; others are longstanding MBTA policy / practice. Accordingly, Bidders / proposers should only redline or object to provisions that they find absolutely unacceptable. Any rejection or modification of these provisions may disqualify a Bid / proposal as being non-responsive or non-compliant.

## **2.7 COLLUSION**

The Bidder understands that any Bid submitted to the MBTA is made without collusion with any other Bidder submitting a Bid on the same commodity / service, and is in all respects fair and without fraud.

## **2.8 PRICES**

Each Bid must contain the unit price(s) / rate(s) or lump sum price, extended price(s), and the grand total of the Bid. Bidders shall submit their pricing using **Form B: Requested Goods & Services Pricing Form**. The unit price / rate shall prevail in case of an error in price extension. Prices submitted shall be valid throughout the Acceptance Period (*see Section 2.10 Acceptance Period*).

## **2.9 ALTERNATIVE BIDS**

If an alternative Bid is offered by the Bidder, it must be offered on an “or equal” basis and be clearly identified in the submission. The Bidder must provide a complete set of specifications and other descriptive matter for all alternates proposed and shall fill out **Form C: Alternate Goods & Services Pricing Form**. Any proposed alternate good / service will be evaluated by the MBTA to determine whether the item is, in the opinion of the MBTA, an “approved” equal.

## **2.10 ACCEPTANCE PERIOD**

The Authority requires a minimum Acceptance Period of at least one hundred and twenty (120) calendar days. In case the MBTA requires an extension, the MBTA will notify all Bidders accordingly. “Acceptance Period” for purposes of this solicitation means the number of calendar days available to the MBTA for awarding a contract based on the Due Date specified in this solicitation for receipt of Bids.

## **2.11 ELIGIBLE ENTITIES**

Any contract resulting from this Bid will be open for use by all MassDOT Divisions.

## **2.12 DELIVERY TERMS**

Bid prices must be inclusive, but not restricted to, all freight, packaging, handling, taxes, and duties for delivery at the specified address: MBTA Somerville Stockroom – Somerville, MA. For U.S. domestic deliveries, Bid prices must include F.O.B. destination with freight charges paid by Bidder. For cross border deliveries, Bid prices must include D.D.P. (Incoterms 2010).

## **2.13 PRE-CONTRACTUAL EXPENSES**

The MBTA shall not be liable for any pre-contractual expenses incurred by the Bidder in the preparation of its proposal. The Bidder shall not include any such expenses as part of its proposal. Pre-contractual expenses are defined as expenses incurred by the Bidder including but not limited to preparing its Bid in response to this solicitation, submitting its Bid to the MBTA, negotiating with the MBTA any matter related to this Bid, inspection, testing, shipping, and return shipping of proposed goods samples, or any other expenses incurred by the Bidder prior to date of award, if any, of the Agreement.

## **2.14 TAX EXEMPTION**



The MBTA is exempt from Federal Excise Tax, including Transportation Tax, and will furnish properly executed tax exemption certificates upon request. The MBTA is also exempt from Massachusetts State Sales Tax — Exemption Number E-042-323-989. Such taxes should not be included in Bid prices.

The Bidder alone shall be responsible for payment of all federal, state and local taxes of all types and kinds applicable to such fees incurred under this Agreement.

## **2.15 INSURANCE**

The insurance policies that the successful bidder shall carry are outlined in the attached **MBTA Minimum Insurance Requirements** document with this solicitation. The attachment will be included with the solicitation posting on COMMBUYS. The successful bidder shall submit proof of insurance for the requirements detailed at the time of submitting their bid. If in the case they are not available at the time of preparing their Bid, the successful bidder certifies that they will carry such insurance policies and all costs resulting from this are included in their pricing. The successful bidder shall provide proof of insurance within three business days of conditional notice of award.

## **2.16 DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL**

The Massachusetts Bay Transportation Authority has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. See *Section 7.1.21 Federal Requirements – Disadvantaged Business Enterprises* for detail on the DBE policy, program, and requirements.

The MBTA has established the following goal(s) for participation on this contract by DBEs. The applicable goal remains in effect throughout the life of the contract regardless of whether pre-identified DBE subcontractors remain on the Project or under contract:

**Supplies & Services Contracts:** The DBE Participation Goal for this Project is 0%.

Bidders and proposed DBE subcontractors shall complete and submit with the bid **Form D: DBE Letter of Intent** and **Form E: Schedule of Participation by Disadvantaged Business Enterprises**.

When the bidder completes **Form E: Schedule of Participation by Disadvantaged Business Enterprises** the bidder will determine whether or not they need to complete **Form F: DBE Joint Check Arrangement Approval Form** and / or **Form G: Joint Venture Affidavit**. If the bidder needs to complete Form F or Form G, the bidder shall contact the MBTA buyer to request the forms.

The successful Bidder(s) must complete and submit the Affidavit of Subcontractor Payment (attached as Form I) on a quarterly basis.

## **2.17 BUY AMERICA REQUIREMENTS**

Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000). The successful bidder agrees to comply with 49 U.S.C. 5323(j) as amended by MAP-21, 49 U.S.C. 5323(h), 49 CFR Part 661, and FAST Act (Pub. L. 114-94) which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. See *Section 7.1.20.3 Buy America Requirements* for complete information on Buy America requirements.

Bidders must complete **Form H: Buy America Certification Form** to submit with their bid.



### 3. Selection Process

#### 3.1 BASIS OF AWARD

Award will be made to the **lowest priced responsive Bid and responsible Bidder**. The MBTA reserves the right, in its sole discretion, to determine if a Bid is responsive and the Bidder is responsible, and the MBTA reserves the right to consider Bidder's confirmed delivery dates and lead times. In determining whether a Bidder has the ability to perform successfully under the terms and conditions of the proposed procurement, the MBTA will consider such matters as the Bidder's integrity, compliance with public policy (e.g., EEO record, attainment of DBE goal, debarment status, etc.), record of past performance, and financial and technical resources. Bidder is required to complete **Form A: Pre-Award Bidder Evaluation Data Form**.

#### 3.2 SCOPE OF PROPOSAL

Pursuant to this Invitation for Bid ("IFB"), Bidders and Bids are required to comply with the terms and conditions stated herein in order to be deemed responsive and responsible. If a Bid does not meet all of the requirements listed in the solicitation, the Bidder's proposal may be disqualified. Failure by the Bidder to examine all information pertaining to this solicitation or participate in any scheduled on-site visits will be at the Bidder's risk.

#### 3.3 REJECTION OF BID

The MBTA reserves the right to reject any and all Bids, in whole or in part, if such action is determined to be in the best interests of the Authority. Unless all Bids are rejected, award shall be made to the lowest priced responsive Bid and responsible Bidder.

#### 3.4 CANCELLATION OF BID

The Authority reserves the right to cancel this Bid at any time prior to execution of the Contract by all parties and without any liability against the Authority.

#### 3.5 APPEAL / PROTEST PROCEDURES

Bid appeals / protests relative to this procurement will be reviewed and adjudicated in accordance with the MBTA's Appeals / Protest Procedure - Goods & Services. A copy of this procedure is available by contacting the Buyer assigned to this procurement and available online at [www.mbta.com](http://www.mbta.com).

### 4. MBTA Policies

#### 4.1 SMALL, MINORITY, WOMEN, AND OTHER DISADVANTAGED BUSINESSES

It is the policy of the Commonwealth and the MBTA to ensure non-discrimination in the procurement of goods and services. It is the MBTA's intention to create a level playing field on which all contractors and subcontractors can compete fairly for contracts. The MBTA promotes equity of opportunity in state contracting; and to that end; encourages full participation of certified small, minority, women, and other disadvantaged owned businesses as those terms are defined by the Commonwealth's Supplier Diversity office. The MBTA further recognizes the importance of meaningful partnerships involving subcontracting with certified small minority, women and other disadvantaged owned businesses.

#### 4.2 MBTA RESERVED



In connection with this IFB, the MBTA reserves to itself all rights (which rights shall be exercisable by the MBTA in its sole discretion) available to it under applicable laws, including without limitation, with or without cause and with or without notice, the right to:

- a) Modify the IFB process in its sole discretion to address applicable law and/or the best interests of the MBTA.
- b) Cancel this IFB in whole or in part at any time prior to the execution by the MBTA of a Contract, without incurring any cost, obligations, or liabilities.
- c) Issue a new Invitation for Bids after withdrawal of this IFB.
- d) Not select any Bidder or cancel this procurement.
- e) Reject any and all submittals and Responses received at any time.
- f) Modify all dates set or projected in this IFB.
- g) Terminate evaluations of Responses received at any time.
- h) Exclude any potential Bidder from submitting any response to the IFB based on failure to comply with any requirements of those documents.
- i) Suspend and terminate Contract negotiations at any time, elect not to commence Contract negotiations with any responding Bidder, and engage in negotiations with the next lowest Bid from a responsible Bidder if negotiations are unsuccessful with the apparent successful Bidder.
- j) Issue addenda, supplements, and modifications to this IFB.
- k) Require confirmation or clarification of information furnished by a Bidder, require revised or additional information from a Bidder concerning its Response, and require additional information to clarify a Response.
- l) Conduct presentations with Bidders, identify a short-list of Bidders, and conduct on-site visits at Bidder facilities.
- m) Declare a competitive range, conduct discussions, and request Response revisions and best and final offers.
- n) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this IFB.
- o) Add or delete Bidder responsibilities from the information contained in this IFB.
- p) Waive deficiencies in a Response, accept and review a non-conforming Response, or permit clarifications, revisions, or supplements to a Response.
- q) Negotiate with a Bidder without being bound by any provision in its Response, or choose to award and/or execute the Contract without negotiations.
- r) Disqualify any Bidder that changes its submittal without MBTA approval.
- s) Disqualify any Bidder under this IFB for violating any rules or requirements of the procurement set forth in this IFB or in any other communication from MBTA.
- t) Conduct all or any portion of the Scope of Work itself.
- u) Exercise any other right reserved or afforded to the MBTA under this IFB or available pursuant to applicable law.

This IFB does not commit the MBTA to enter into a Contract or proceed with the procurement described herein. The MBTA assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse



all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this IFB. All of such costs shall be borne solely by each Bidder.

In no event shall the MBTA be bound by, or liable for, any obligations with respect to the work to be performed under the Contract until such time (if at all) as the Contract, in form and substance satisfactory to the MBTA, has been executed and authorized by the MBTA and, then, only to the extent set forth therein.

In submitting a response to the IFB, each Bidder is specifically acknowledging these disclaimers.

## 5. Contract Structure

### 5.1 CONSTRUCTION OF CONTRACT

The contract between the MBTA and the successful Bidder shall be formed by the following sections and documents that constitute IFB 107F-23, in order of precedence.

1. Any change orders or amendments, the most recent having precedence.
2. **Section 7: Massachusetts Bay Transportation Authority Standard Contract and Terms & Conditions** (including Supplemental Provisions, Insurance Requirements, Federal Requirements, and Federal Requirements – Disadvantaged Business Enterprises, if any)
3. **MBTA Specification or Scope of Work**
4. **Form B: Requested Goods & Services Pricing Form**, or if accepted, Form C: Alternate Goods & Services Pricing Form



## Enclosure 1 – Bid Cover Letter

Massachusetts Bay Transportation Authority  
 Attention: Procurement and Logistics Department  
 10 Park Plaza, Suite 2810  
 Boston, MA 02116

**Instructions:** Bidders shall complete the Bid Cover Letter below with their company name, total bid amount, and completed check boxes to indicate the bid documents that constitute their bid. **The Bid Cover Letter should be placed on the top of all bid documents when submitted to the MBTA.**

IFB #:	107F-23
Project Name:	erecta step roof platform
Bidder (Company Name):	
Total Bid Amount:	

The undersigned Bidder having carefully examined and understood the documents included in the Invitation For Bids (“IFB”), hereby offers to MBTA the “*Bid*” as contained in the following responses enclosed with this letter:

Forms	Check to Indicate Submitted Bid Documents
Form A: Pre-Award Bidder Evaluation Form	<input type="checkbox"/>
Form B: Requested Goods & Services Pricing Form	<input type="checkbox"/>
Form C: Alternate Goods & Services Pricing Form (if applicable)	<input type="checkbox"/>
Form D: DBE Letter of Intent	<input type="checkbox"/>
Form E: Schedule of Participation by Disadvantaged Business Enterprises	<input type="checkbox"/>
Form F: DBE Joint Check Arrangement Approval Form (if applicable)	<input type="checkbox"/>
Form G: Joint Venture Affidavit Form (if applicable)	<input type="checkbox"/>
Form H: BUY AMERICA Certification Form (if applicable)	<input type="checkbox"/>
Signed Section 7.1 Massachusetts Bay Transportation Authority Standard Terms and Conditions	<input type="checkbox"/>
Note: Section 7 Massachusetts Bay Transportation Authority Standard Contract is NOT to be submitted; it is not completed until award	<input type="checkbox"/>
Proof of Insurance	<input type="checkbox"/>

We confirm that our Bid is in exact accordance with the solicitation with no exceptions to, or comments upon, the solicitation documents. We confirm that the submission of our Bid with the signature below makes all certifications as outlined in the solicitation documents. This Bid shall constitute a binding offer open for acceptance by the MBTA.



We confirm that this Bid has been prepared and is compliant with the solicitation instructions and agree to conduct ourselves in accordance with the solicitation. We confirm receipt of all addenda related to this solicitation. We confirm the 120 days Acceptance Period of this Proposal.

The undersigned are authorized to sign on behalf of and to bind \_\_\_\_\_ (include Bidder's company name) to the provisions of this Bid.

Bidder (company name): \_\_\_\_\_

Authorized Representative Name: \_\_\_\_\_  
(BLOCK LETTERS)

Authorized Representative's Signature: \_\_\_\_\_

Title: \_\_\_\_\_  
Date: \_\_\_\_\_



## Form A: Pre-Award Bidder Evaluation Data Form

Pre-Award Bidder Evaluation Data	
Name of Firm:	
Federal Identification Number:	
Legal Address:	
Contact Name:	
Telephone Number:	
Email:	
<b>Please select one:</b>	
<input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Joint Venture	
Date Organized:	
State Incorporated:	
Names of Officers or Partners:	
<b>Please provide details of any litigation, suits, or court action taken or pending against Bidder below:</b>	
<b>Please provide the following information that demonstrates that the Bidder together with its selected Affiliates and or Subcontractors has the required capabilities to successfully execute the Work. Please submit as attachments the following requested documents:</b>	
Audited financial statements for the last 3 financial years	<input type="checkbox"/>
Attach, if applicable, a list of similar current contracts that demonstrates your technical proficiency, each with contract value amount, name of contracting party, type of work completed, and percentage of work complete to date.	<input type="checkbox"/>
Attach, if applicable, a list of all principal subcontractors and the percentage and nature and value of work each will perform on this project. Principal items of work shall include, but not be limited to, those listed in the solicitation.	<input type="checkbox"/>
<b>Please provide answers to the following questions:</b>	
<b>Check Answer</b>	



Do you have any outstanding indebtedness or unsecured loans or debts or trading losses not reported within the financial reports?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you have any contracts over the last two years that were assessed liquidated damages or termination for non-performance?	Yes <input type="checkbox"/> No <input type="checkbox"/>

If the Bidder or subcontractor is a joint venture, submit this Pre-Award Bidder Evaluation Data form for each member of the joint venture.



## Form B: Requested Goods & Services Pricing Form

Bidders are required to quote firm fixed price(s) / rate(s) or lump sums. The quoted prices shall be inclusive of ancillary charges including but not limited to prevailing wages, tooling, equipment, transportation costs, customs, duty charges, and other associated charges. Bidders shall quote only on goods and services in strict accordance with the specifications / requirements.

Bidder's Name:					
Item Number	Item Description	Unit of Measure	Quantity	Unit Price	Item Total
1	MBTA Modified MP1-126 RH & LH BUS EMCLOS ITEM NO: 99999999 ERECTASTEP MOBILE LEFT SIDE - MGI20221216.151232.V1-A MOBILE RIGHT SIDE - MGI20221216.151232.V1-B	Each	1	\$_____	\$_____
2	Shipping & Handling	Each	1	\$_____	\$_____
3	Installation	Each	1	\$_____	\$_____
<b>Total Bid Amount / Basis of Award (add all item totals):</b>					\$_____
Additional specifications / requirements beyond those listed in this table are attached to this IFB. The attached specifications are part of the original posting on the <a href="#">COMMBUYS</a> .					
<input type="checkbox"/> YES <input type="checkbox"/> NO					
Point of Destination for goods:					
MBTA SOMERVILLE STOCKROOM – SOMERVILLE, MA					
Delivery Time from order receipt to delivery date:					
Enter text here					
<i>Please note: Bid prices must be inclusive, but not restricted to, all freight, packaging, handling, taxes, and duties for a delivery at the point of destination above (see Section 2.10 Delivery Terms). The MBTA will not pay separate customs duties for shipments, and will refuse to accept any material requiring such payment.</i>					
<b>Prompt Payment Discounts:</b>					
All contractors doing business with the MBTA shall provide a Prompt Payment Discount (PPD) for receiving early payments. Bidder shall provide a Prompt Payment Discount percentage (%) off the invoice payment, for each of the payment issue dates listed. If no discount is offered enter 0%.					
<b>Note:</b> MBTA standard prompt pay discount is 1% 20, Net 45 Days.					
10 days	%	15 days	%	20 days	%
30 days	%				



## Form C: Alternate Goods & Services Pricing Form

**Bidders who desire to propose alternate goods / services shall only complete this form if Section 2.8 allows for alternate bids.** Bidders quoting on functionally equivalent goods and services shall fill out this pricing form with all relevant information for the alternate goods and services. Bids for functionally equivalent goods and services will be considered if accompanied by complete descriptive literature (see Section 2.8). Bidders are required to quote firm fixed price(s) / rate(s). The quoted prices shall be inclusive of ancillary charges including but not limited to prevailing wages, tooling, equipment, transportation costs, customs, duty charges, and other associated charges. Bidders shall quote only on goods and services in strict accordance with the specifications / requirements.

Bidder's Name:					
Item Number	Item Description	Unit of Measure	Quantity	Unit Price	Item Total
				\$ _____	\$ _____
				\$ _____	\$ _____
				\$ _____	\$ _____
<b>Total Bid Amount / Basis of Award (add all item totals):</b>					\$ _____
<p>The Bidder has attached complete descriptive literature beyond the information in this table on the functionally equivalent goods quoted above.</p> <p><input type="checkbox"/> YES      <input type="checkbox"/> NO</p>					
<p>Point of Destination for goods:</p> <p>MBTA SOMERVILLE STOCKROOM – SOMERVILLE, MA</p> <p>Delivery Time from order receipt to delivery date:</p> <p><b>Click or tap here to enter text.</b></p> <p><i>Please note: Bid prices must be inclusive, but not restricted to, all freight, packaging, handling, taxes, and duties for a delivery at the point of destination above (see Section 2.10 Delivery Terms). The MBTA will not pay separate customs duties for shipments, and will refuse to accept any material requiring such payment.</i></p>					
<p><b>Prompt Payment Discounts:</b></p> <p>All contractors doing business with the MBTA shall provide a Prompt Payment Discount (PPD) for receiving early payments. Bidder shall provide a Prompt Payment Discount percentage (%) off the invoice payment, for each of the payment issue dates listed. If no discount is offered enter 0%.</p>					
<p><b>Note:</b> MBTA standard prompt pay discount is 1% 20, Net 45 Days.</p>					
10 days	%	15 days	%	20 days	%
30 days	%				



## Form D: DBE Letter of Intent

**DOCUMENT 010 (to be submitted by the DBE firm)**

**The DBE firm will also include the latest MassUCP letter with this Letter of Intent.**

To: \_\_\_\_\_ (Prime Bidder)

From: \_\_\_\_\_ (DBE Firm)

Contract No.: \_\_\_\_\_ Bid Opening or Due Date: \_\_\_\_\_

Project Name: \_\_\_\_\_ Project Location: \_\_\_\_\_

I, \_\_\_\_\_, authorized signatory of the above-reference DBE firm hereby declare:

(Print Name)

- (a) My company is currently certified as a Disadvantaged Business Enterprise (DBE) by the Massachusetts Supplier Diversity Office (SDO), as a (check all that apply):

CONTRACTOR       REGULAR DEALER       BROKER  
 MANUFACTURER       TRUCKING OPERATIONS       PROFESSIONAL SERVICES

*[Additional guidance is available at Title 49, Code of Federal Regulations, Part 26.55 (49 CFR Part 26.55)]*

- (b) My firm has the ability to manage, supervise and perform the activity described on the following page(s) of this Letter of Intent. If you are awarded the contract, my company intends to enter into a contract with your firm to perform the items of work or other activity described on the following sheet for the prices indicated.  
(c) There have been no changes affecting the ownership, control or independence of my company since my last certification review on **Click or tap to enter a date..** If any such change is planned or occurs prior to my company's completion of this proposed work, I will give prior written notification to your firm and to the Massachusetts Bay Transportation Authority (MBTA) Office of Diversity and Civil Rights and SDO.  
(d) I have read the MBTA proposal for the Project, and acknowledge that my company will comply with that document and the requirements of 49 CFR Part 26.  
(e) For the purpose of obtaining subcontractor approval from the MBTA, my firm will provide to you:

a. ***The following construction work:***

- i. a complete list of contact information for proposed Superintendent, i.e., address, phone number and e-mail address, and;
- ii. a list of projects completed in the last 10 years. I shall also include, for each project: the name and telephone number of a contact person for the contracting authority, person, or organization; project title / location (City/State), dollar value of the work; a description of the work; and the date project completed .

b. ***The following professional services work:***

- i. resume, stating the qualifications and experience of person responsible for project oversight and contact information, i.e., address, phone number and e-mail address.
- ii. proposed team and organization,
- iii. resumes of key personnel;
- iv. example projects

c. ***The following services, materials or supplies:***

- i. a written agreement and invoices for the materials or supplies, and any other documents evidencing the terms of providing such items to be sent to the Office of Diversity and Civil Rights Government Compliance Unit designee;
- ii. information concerning brokers fees and commissions for providing services or materials.

---

DBE Firm Authorized Signature

Date



## Form D: DBE Letter of Intent (cont.)

Prime Bidder:

DBE Firm:

Contract No.:

Bid Opening or Due Date:

Project Name:

Project Location:

<u>Item number</u> if applicable	<u>NAICS Code</u>	<u>Description of Activity</u> with notations such as Services, or Brokerage, Labor Only, Material Only, or Complete	<u>Quantity</u>	<u>Unit Price</u>	<u>Amount</u>
TOTAL AMOUNT:					

*Please give full explanations, attach additional sheets if necessary.*

I HEREBY VERIFY THAT

(DBE Firm)

WILL SOLELY PERFORM THE WORK, OR PROVIDE THE SERVICES OR MATERIALS, AS DESCRIBED ABOVE.

DBE Authorized Signature:

Name (Print):

Title:

Email Address:

Phone Number:

Fax Number:



## Form E: Schedule of Participation by Disadvantaged Business Enterprises

### DOCUMENT 020 (*to be submitted by bidder*)

Prime Bidder \_\_\_\_\_

Date of Bid Opening: \_\_\_\_\_ Contract Number: \_\_\_\_\_

Project Location: \_\_\_\_\_

Name, Address, and Phone Number(s) of DBE	Name of Activity	(a) DBE Contractor Activity Amount	(b) NAICS CODE(S)	(c) Total amount eligible for credit under rules in Supplementary Conditions, Appendix 3 of Section 6
Total Bid Amount	TOTALS:	\$		\$
\$	DBE % of Total Bid:	%		%

Is a Joint Check arrangement needed for any of the above? (see *Section 7.1.21.7 (g)*)

Yes\*       No       Not Known at This Time

\*If yes, contact the MBTA buyer to request and complete Form F: DBE Joint Check Arrangement Approval Form (Document 030).

Are any of the above a joint venture entity?

Yes\*       No

\*If yes, contact the MBTA buyer to request and complete Form G: Joint Venture Affidavit (Document 031).

Will any of the contractors listed above be using a third party (i.e. manufacturer) to deliver materials or perform any portion of work by a third party?

Yes       No

**CERTIFICATION:** I HEREBY DECLARE, TO THE BEST OF MY KNOWLEDGE, THAT I HAVE READ THE SPECIAL PROVISIONS FOR PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES – SECTION 7.1.21. BOTH THIS SCHEDULE AND THE RELEVANT AND ACCOMPANYING LETTER(S) OF INTENT ARE IN FULL COMPLIANCE WITH THE PROVISIONS OF, AND IN ACCORDANCE WITH, TITLE 49 CODE OF FEDERAL REGULATIONS, PART 26 (49 CFR Part 26).

Signature: \_\_\_\_\_

Name (Print): \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_ Telephone: \_\_\_\_\_



## Form H: BUY AMERICA Certification Form

The Bidder agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and 70 percent (70%) domestic content.

A Bidder must submit to the FTA recipient the appropriate Buy America Certification (below) with all Bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

### CERTIFICATION REQUIREMENT FOR PROCUREMENT OF STEEL, IRON, OR MANUFACTURED PRODUCTS:

If applicable, please check one of the following:

<input type="checkbox"/>	<i>Certificate of Compliance with 49 U.S.C. 5323(j)(1)</i>  The Bidder hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.
<input type="checkbox"/>	<i>Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)</i>  The Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

### CERTIFICATION REQUIREMENT FOR PROCUREMENT OF BUSES, OTHER ROLLING STOCK AND ASSOCIATED EQUIPMENT:

If applicable, please check one of the following:

<input type="checkbox"/>	<i>Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).</i>  The Bidder hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.
<input type="checkbox"/>	<i>Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)</i>  The Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.



## Form I: Affidavit of Subcontractor Payment

### Massachusetts Bay Transportation Authority Disadvantaged Business Enterprise (DBE) Program Affidavit of Subcontractor Payment

Code of Federal Regulations 49 §26.37(b) and 26.29 requires the Massachusetts Bay Transportation Authority (MBTA) to monitor the performance of Disadvantaged Business Enterprise (DBE) firms and non-DBE firms on all USDOT assisted transit projects. This affidavit attest that the DBE Firms listed below are performing or have performed a “commercially useful function” (CUF) in accordance with 49 CFR §26.55.

Signing this affidavit hereby certifies that the information provided by Firm acting as Prime Contractor and/or Consultant on said MBTA Project is true and accurate.

**Project Name:** \_\_\_\_\_

**Prime Contractor/Consultant:** \_\_\_\_\_ **MBTA Contract Number:** \_\_\_\_\_

**DBE Goal:** \_\_\_\_\_

**Payment Request #** \_\_\_\_\_ **Invoice Amount:** \_\_\_\_\_

**Payment Period:** From \_\_\_\_\_ to \_\_\_\_\_

**Final Payment:** Check this box **only** when submitting final pay request.

#### **SECTION 1: PAYMENT TO SUBCONTRACTORS**

Complete the chart below for **ALL SUBCONTRACTORS** participating on project regardless of dollar amount.

Report payments that have already been made to subcontractors.

<b>Subcontractor Name</b>	<b>Is Subcontractor a DBE? ( Yes or No)</b>	<b>Total Contract Commitment Amount</b>	<b>Paid Thru Last</b>	<b>Payment this Period</b>	<b>Cumulative Payment</b>



## SECTION 2: SIGNATURE AUTHORIZATION AND NOTARIZATION

The undersigned Firm certifies that the preceding chart is a true and accurate statement that all payments that have been distributed to subcontractors and suppliers on said MBTA Project. If no subcontractors or suppliers are listed on the preceding chart, the Firm certifies that no subcontractors or suppliers were used in performing said MBTA Project for the payment period indicated.

Firm Representative Name/Title (print)	Signature
<b>NOTE: This affidavit must be notarized.</b> Sworn or affirmed and subscribed before me this _____ day of _____ 20_____	
Notary Signature: _____	

DBE Owner Name/Title (Print)	Signature
<b>NOTE: This affidavit must be notarized.</b> Sworn or affirmed and subscribed before me this _____ day of _____ 20_____	
Notary Signature: _____	

Non-DBE Subcontractor Owner Name/Title (Print)	Signature
<b>NOTE: This affidavit must be notarized.</b> Sworn or affirmed and subscribed before me this _____ day of _____ 20_____	
Notary Signature: _____	

**Please mail the original, completed and signed form to the MBTA Assist Director of Government Compliance:**

Massachusetts Department of Transportation/MBTA,  
Office of Diversity & Civil Rights,  
10 Park Plaza, Suite 3800, Boston, MA 02116

Please also send a scanned copy by Email to [Type Buyer email here](#)



## Form J: Certification Regarding Lobbying

PAGE 1 OF 2

Under the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 (to be codified at 2 U.S.C. § 1601 et seq.), Contractors who apply or bid for an award of \$100,000 or more must file the certification required by 49 CFR parts 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an office or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C 1352. Each tier must also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

I, \_\_\_\_\_, hereby certify on behalf of \_\_\_\_\_  
(Name and Title) (Offeror)

that to the best of my knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan or cooperative agreement, the undersigned must complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
3. The undersigned must require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients must certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]



**PAGE 2 OF 2**

The Offeror, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

OFFEROR'S NAME: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE:

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_.

By \_\_\_\_\_,  
(Signature of Authorized Official)

\_\_\_\_\_  
(Title of Authorized Official)



## 6. MBTA Standard Contract and Terms and Conditions Instructions for Vendors

### 6.1 MBTA STANDARD CONTRACT INSTRUCTIONS (SECTION 7)

**Section 7 is not to be signed and submitted by bidders as part of their bid.** Only the awarded contractor shall complete Section 7 after the MBTA has determined the **lowest priced responsive Bid and responsible Bidder** (see *Section 3.1 Basis of Award*).

In order to award and execute the contract, the MBTA buyer will complete the necessary information on Section 7 and send it to the successful contractor to fill out the following sections and to sign it.

### 6.2 MBTA STANDARD TERMS & CONDITIONS INSTRUCTIONS (SECTION 7.1)

Each bidder must review and sign Section 7.1 Massachusetts Bay Transportation Authority Standard Terms and Conditions and submit the signed Section 7.1 with their bid for the bid to be responsive and complete.

The MBTA does not encourage attempts to negotiate the Massachusetts Bay Transportation Authority Standard Contract Terms & Conditions (Section 7.1). Many of these provisions are required by law; others are longstanding MBTA policy / practice. Accordingly, Bidders / proposers should only redline or object to provisions that they find absolutely unacceptable. Any rejection or modification of these provisions may disqualify a Bid / proposal as being non-responsive or non-compliant.



## 7. Massachusetts Bay Transportation Authority Standard Contract

<b>CONTRACTOR LEGAL NAME:</b> (and d/b/a):	Massachusetts Bay Transportation Authority (MBTA)	
<b>Legal Address:</b> (W-9, W-4,T&C):	10 Park Plaza Boston, MA 02116	
<b>Contract Manager/Administrator:</b>	<u>Billing Address (if different): invoices@mbta.com</u>	
<b>E-Mail:</b>	<u>Contract Manager/Administrator:</u>	
Phone:	Fax:	Email:
<b>Contractor Vendor Code:</b>	Phone:	
	RFR/RFP/IFB/Procurement or Other ID Number:	
<b>NEW CONTRACT</b> <p><b>PROCUREMENT OR EXCEPTION TYPE:</b> (Check one option only)</p> <p><input type="checkbox"/> <u>Statewide Contract</u> (OSD or an OSD-designated Department)  <input type="checkbox"/> <u>Collective Purchase</u> (Attach OSD approval, scope, budget)  <input type="checkbox"/> <u>MBTA Procurement</u> Attach RFR/RFP/IFB and Response or other procurement supporting documentation  <input type="checkbox"/> <u>Emergency Contract</u> (Attach justification for emergency, scope, budget)  <input type="checkbox"/> <u>Contract Employee</u> (Attach <u>Employment Status Form</u>, scope, budget)  <input type="checkbox"/> <u>Legislative/Legal or Other</u>: (Attach authorizing language/justification, scope and budget)</p>		
<b>CONTRACT AMENDMENT</b> <p>Enter Current Contract End Date <u>Prior</u> to Amendment: _____, 20_____.  Enter Amendment Amount: \$ _____. (or "no change")</p> <p><b>AMENDMENT TYPE:</b> (Check one option only. Attach details of Amendment changes.)</p> <p><input type="checkbox"/> <u>Amendment to Scope or Budget</u> (Attach updated scope and budget)  <input type="checkbox"/> <u>Interim Contract</u> (Attach justification for Interim Contract and updated scope/budget)  <input type="checkbox"/> <u>Contract Employee</u> (Attach any updates to scope or budget)  <input type="checkbox"/> <u>Legislative/Legal or Other</u>: (Attach authorizing language/justification and updated scope and budget)</p>		
<b>The MBTA Terms and Conditions (T&amp;C) under Section 7.1 has been executed, and is incorporated by reference into this Contract.</b>		
<p><b>COMPENSATION:</b> (Check ONE option): The MBTA certifies that payments for authorized performance accepted in accordance with the terms of this Contract</p> <p><input type="checkbox"/> <u>Rate Contract</u> (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)</p> <p><input type="checkbox"/> <u>Maximum Obligation Contract</u> Enter Total Maximum Obligation for total duration of this Contract (or <u>new</u> Total if Contract is being amended). \$ _____.</p>		
<p><b>PROMPT PAYMENT DISCOUNTS (PPD):</b> MBTA payments are issued through EFT 45 days from invoice receipt. Contractors requesting <b>accelerated</b> payments must identify a PPD as follows: Payment issued within 10 days ____% PPD; Payment issued within 15 days ____% PPD; Payment issued within 20 days ____% PPD; Payment issued within 30 days ____% PPD. If PPD percentages are left blank, identify reason: agree to standard 45 day cycle only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)</p>		
<p><b>BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT:</b> (The furnishing, delivery, and installation of an ErectaStep roof platform at the MBTA's Somerville stockroom location.)</p>		
<p><b>ANTICIPATED START DATE:</b> (Complete ONE option only) MBTA and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:</p> <p><input type="checkbox"/> 1. May be incurred as of the <u>Effective Date</u> (latest signature date below) and <u>no</u> obligations have been incurred <u>prior</u> to the <u>Effective Date</u>.  <input type="checkbox"/> 2. May be incurred as of <u>_, 20__</u>, a date <b>LATER</b> than the <u>Effective Date</u> below and <u>no</u> obligations have been incurred <u>prior</u> to the <u>Effective Date</u>.  <input type="checkbox"/> 3. were incurred as of <u>_, 20__</u>, a date <b>PRIOR</b> to the <u>Effective Date</u> below, and the parties agree that payments for any obligations incurred prior to the <u>Effective Date</u> are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the MBTA from further claims related to these obligations.</p>		
<p><b>CONTRACT END DATE:</b> The term of this contract is from the effective date until acceptance of the goods, provided that such terms as are intended to survive termination of the agreement shall continue in full force and effect.</p>		
<p><b>CERTIFICATIONS:</b> Notwithstanding verbal or other representations by the parties, the "<b>Effective Date</b>" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the MBTA, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor makes all certifications required under the attached <u>Contractor Certifications</u> (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable MBTA Terms and <u>Conditions</u>, this Standard Contract Form including the <u>Instructions and Contractor Certifications</u>, the Request for Response (RFR), Request for Proposal (RFP), Invitation for Bid (IFB) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR/RFP/IFB and the Contractor's Response only if made using the process outlined in <u>801 CMR 21.07</u>, incorporated herein, provided that any amended RFR/RFP/IFB or Response terms result in best value, lower costs, or a more cost effective Contract.</p>		
<p><b>AUTHORIZING SIGNATURE FOR THE CONTRACTOR:</b></p> <p>X: _____ Date: _____  (Signature and Date Must Be Handwritten At Time of Signature)</p> <p>Print Name: _____ Print  Title: _____</p>		<p><b>AUTHORIZING SIGNATURE FOR THE MBTA:</b></p> <p>X: _____ Date _____  (Signature and Date Must Be Handwritten At Time of Signature)</p> <p>Print Name: _____  Print Title: _____</p>



## **7.1 STANDARD TERMS AND CONDITIONS**

Upon execution by the Contractor, these Terms and Conditions will be incorporated by reference into any Contract executed by the Contractor and the Massachusetts Bay Transportation Authority (MBTA), in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the MBTA, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The MBTA is entitled to ownership and possession of all deliverables purchased or developed with MBTA funds.

### **7.1.1 Contract Effective Start Date**

Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the MBTA, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

### **7.1.2 Payments and Compensation**

The Contractor shall only be compensated for performance delivered and accepted by the MBTA in accordance with the specific Terms and Conditions of a Contract. Overpayments shall be reimbursed by the Contractor or may be offset by the MBTA from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the MBTA from all claims, liabilities or other obligations relating to the performance of a Contract. See **Form B: Requested Goods & Services Pricing Form**, and **Form C: Alternate Goods & Services Pricing Form**, as applicable, for agreed pricing.

### **7.1.3 Contractor Payment Mechanism**

All Contractors will be paid using the MBTA invoicing system and Contractor will submit its invoice with all supporting documentation as prescribed in a Contract. The MBTA shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable the MBTA to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty.

### **7.1.4 Contract Termination or Suspension**

A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The MBTA may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate MBTA action. Upon immediate notification to the other party, neither the MBTA nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

### **7.1.5 Written Notice**

Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the MBTA or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to



perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

#### **7.1.6 Record-keeping and Retention, Inspection of Records**

The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The MBTA shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

#### **7.1.7 Assignment**

The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract without the written approval of the MBTA, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. C. 106, §9-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the MBTA to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter-claims or any other MBTA rights which are available to the MBTA against the Contractor. The sale of fifty percent (50%) or more of the equity ownership of a Contractor shall be considered an assignment requiring the prior written approval of the MBTA. Impermissible assignments shall be null and void.

#### **7.1.8 Subcontracting By Contractor**

Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the MBTA and shall be consistent with and subject to the provisions of these MBTA Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The MBTA is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party. Subcontracts shall note that the MBTA is not a party to the subcontract. Failure to promptly pay a Sub-Contractor for work performed where the Contractor has been paid by the MBTA shall constitute a material breach of the Contract between MBTA and Contractor.

#### **7.1.9 Affirmative Action, Non-Discrimination in Hiring and Employment**

The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

#### **7.1.10 Indemnification**

The Contractor shall release, defend (at the MBA's option), indemnify and hold harmless the MBTA, its agents, officers and employees (collectively the "indemnified parties") against any and all claims, demands, liabilities, judgments, penalties, costs, expenses (including attorneys' fees and experts' fees), and damages ("Claims") based on or arising out of any actual or alleged loss or injury (including death) to persons or



damage to real or tangible property, or patent or copyright infringement, that are caused or alleged to be caused, in whole or in part, by, or arising out of the acts or omissions of the Contractor, its agents, servants, employees or subcontractors. The MBTA agrees to notify the Contractor in writing within a reasonable period of time of the assertion of any Claim for which the Contractor has agreed to indemnify the MBTA pursuant to this section. The MBTA shall not be liable for any costs incurred by the Contractor arising under this section. If the MBTA incurs any cost or fees for attorneys or experts, or any other costs or expense, to enforce its right to indemnification or defense under this section, the Contractor shall fully reimburse the MBTA for such costs, fees and expense.

#### **7.1.11 Waivers**

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor shall it in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

#### **7.1.12 Risk of Loss**

The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, MBTA personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the MBTA.

#### **7.1.13 Forum, Choice of Law and Mediation**

Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The MBTA and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

#### **7.1.14 Interpretation, Severability, Conflicts with Law, Integration**

Any amendment or attachment to any Contract which contains conflicting language or has the effect of a deleting, replacing or modifying any printed language of these MBTA Terms and Conditions, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 7.1.1 of these MBTA Terms and Conditions (*Section 7.1*). The printed language of the Standard Contract Form (*Section 7*), which incorporates by reference these MBTA Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: any applicable federal provisions, any supplemental provisions, any negotiated terms and conditions allowable pursuant to law or regulation; the printed language of the MBTA Terms and Conditions; the Standard Contract; the MBTA's Request for Response/Proposal/Bid (RFR/RFP/IFB) solicitation document; and the Contractor's Response to the RFR/RFP/IFB solicitation, excluding any language stricken by the MBTA as unacceptable.

#### **7.1.15 Insurance to be Carried by the Contractor**

The successful Contractor shall submit proof of insurance for the requirements detailed in the attached **MBTA Minimum Insurance Requirements** enclosure with this solicitation. The attachment will be included with the solicitation posting on [COMMBUY'S](#). If in the case they are not available at the time of preparing their Bid, the successful Contractor certifies that they will carry such insurance policies and all costs resulting from this are included in their pricing. The successful Contractor shall provide proof of



insurance within three business days of conditional notice of award.

#### **7.1.16 Contractor Certifications and Legal References**

The Contractor makes all certifications required under this Contract under the pains and penalties of perjury, and agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein.

##### **7.1.16.1 MBTA and Contractor Ownership Rights**

The Contractor certifies and agrees that the MBTA is entitled to ownership and possession of all “deliverables” purchased or developed with Contract funds.

##### **7.1.16.2 Qualifications**

The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability; and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State's website as licensed to do business in Massachusetts, as required by law.

##### **7.1.16.3 Business Ethics and Fraud, Waste and Abuse Prevention**

The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

##### **7.1.16.4 Collusion**

The Contractor certifies that this Contract has been offered in good faith and without collusion, fraud or unfair trade practices with any other person, that any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

##### **7.1.16.5 Public Records and Access**

The Contractor shall provide full access to records related to performance and compliance to the MBTA pursuant to G.L. c. 11, s.12 for seven (7) years beginning on the first day after the final payment under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor cannot claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under the Massachusetts Public Records Law.

##### **7.1.16.6 Debarment**

The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation.

##### **7.1.16.7 Applicable Laws**

The Contractor shall comply with all applicable state laws and regulations including but not limited to the applicable Massachusetts General Laws; Code of Massachusetts Regulations 801 CMR 21.00 (Procurement of Commodity and Service Procurements); M G.L. c. 66A; and the Massachusetts Constitution Article



XVIII if applicable.

#### **7.1.16.8 Tax Law Compliance**

The Contractor certifies under the pains and penalties of perjury tax compliance with Federal tax laws; state tax laws including but not limited to G.L. c. 62C, G.L. c. 62C, s. 49A; compliance with all state tax laws, reporting of employees and contractors, withholding and remitting of tax withholdings and child support and is in good standing with respect to all state taxes and returns due; reporting of employees and contractors under G.L. c. 62E, withholding and remitting child support including G.L. c. 119A, s. 12; TIR 05-11; New Independent Contractor Provisions and applicable TIRs.

#### **7.1.16.9 Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts**

The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing **at least 45 days prior** to filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is **any risk** to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill the terms of this Contract or Amendment. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

#### **7.1.16.10 Federal Anti-Lobbying and Other Federal Requirements**

If receiving federal funds, the Contractor certifies compliance with federal anti-lobbying requirements including 31 USC 1352; other federal requirements; Executive Order 11246; Air Pollution Act; Federal Water Pollution Control Act and Federal Employment Laws.

#### **7.1.16.11 Protection of Commonwealth Data, Personal Data and Information**

The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all Commonwealth/MBTA data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under M.G.L. c. 93H and c. 66A and other applicable state and federal privacy requirements. The Contractor shall comply with M.G.L. c. 93I for the proper disposal of all paper and electronic media, backups or systems containing personal data and information. The Contractor shall also ensure that any personal data or information transmitted electronically or through a portable device is properly encrypted using (at a minimum) the Commonwealth's "Cryptographic Management Standard" set forth in the Enterprise Information Security Policies and Standards published by the Executive Office for Technology, Services and Security (TSS), or a comparable Standard prescribed by the MBTA. Contractors with access to credit card or banking information of Commonwealth/MBTA customers certify that the Contractor is PCI compliant in accordance with the Payment Card Industry Council Standards, and shall provide confirmation compliance during the Contract. The Contractor shall immediately notify the MBTA in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the MBTA and provide access to any information necessary for the MBTA to respond to the security breach and shall be fully responsible for any damages associated with the Contractor's breach including but not limited to G.L. c. 214, s. 3B.

For all Contracts involving the Contractor's access to personal information, as defined in G.L. c. 93H, and



personal data, as defined in [G.L. c. 66A](#), or access to MBTA or Commonwealth systems containing such information or data, Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read M.G.L. c. 93H and c. 66A and agrees to protect any and all personal information and personal data; and (2) has reviewed all of the Enterprise Information Security Policies and Standards published by the Executive Office for Technology Services and Security (TSS), or stricter standards prescribed by the MBTA. Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all public authorities, executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with any pertinent security guidelines, standards, and policies; (2) comply with all Enterprise Information Security Policies and Standards published by the Executive Office for Security Services and Technology (TSS), or a comparable set of policies and standards ("Information Security Policy") as prescribed by the MBTA; (3) communicate and enforce such security guidelines, standards, policies and the applicable Information Security Policy among all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information and data to which the Contractor is given access by the MBTA from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information or personal data (collectively referred to as the "unauthorized use"): (a) immediately notify the MBTA if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the MBTA to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the MBTA and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth and MBTA may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 7.1.10 of MBTA's [Terms and Conditions](#), withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under [G.L. c. 214, § 3B](#) for violations under M.G.L c. 66A.

#### **7.1.16.12 Corporate and Business Filings and Reports**

The Contractor certifies compliance with any certification, filing, reporting and service of process requirements of the [Secretary of State](#) and other Departments as related to its conduct of business in the Commonwealth; and with its incorporating state (or foreign entity).

#### **7.1.16.13 Employer Requirements**

Contractors that are employers certify compliance with applicable state and federal employment laws or regulations, including but not limited to [G.L. c. 5, s. 1](#) (Prevailing Wages for Printing and Distribution of Public Documents); [G.L. c. 7, s. 22](#) (Prevailing Wages for Contracts for Meat Products and Clothing and Apparel); [minimum wages and prevailing wage programs and payments](#); [unemployment insurance](#) and contributions; [workers' compensation and insurance](#), [child labor laws](#), AGO fair labor practices; [G.L. c. 149](#) (Labor and Industries); [G.L. c. 150A](#) (Labor Relations); [G.L. c. 151](#) and [455 CMR 2.00 \(Minimum Fair Wages\)](#); [G.L. c. 151A](#) (Employment and Training); [G.L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); [G.L. c. 152](#) (Workers' Compensation); [G.L. c. 153](#) (Liability for Injuries); [102 CMR 12.00](#) (Dependent Care Assistance Program); [29 USC c. 8](#) (Federal Fair Labor Standards); [29 USC c. 28](#) and the [Federal Family and Medical Leave Act](#) and M.G.L. c. 175M (Family and Medical Leave).

#### **7.1.16.14 Federal And State Laws And Regulations Prohibiting**



## Discrimination

Contractors certify compliance with applicable state and federal anti-discrimination laws including but not limited to the Federal Equal Employment Opportunity (EEO) Laws the Americans with Disabilities Act; 42 U.S.C Sec. 12,101, et seq., the Rehabilitation Act, 29 USC c. 16 s. 794; 29 USC c. 16 s. 701; 29 USC c. 14, 623; the 42 USC c. 45; (Federal Fair Housing Act); G. L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); the Public Accommodations Law G.L. c. 272, s. 92A; G.L. c. 272, s. 98 and 98A, Massachusetts Constitution Article CXIV and G.L. c. 93, s. 103; 47 USC c. 5, sc. II, Part II, s. 255 (Telecommunication Act; Chapter 149, Section 105D, G.L. c. 151C, G.L. c. 272, Section 92A, Section 98 and Section 98A, and G.L. c. 111, Section 199A, and Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities, and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also MCAD and MCAD links and Resources.

### 7.1.16.15 Right-to-Know Law

The Contractor shall certify that it will comply with the Massachusetts Right-To-Know Law, Chapter 470 of the Acts of 1983. Additionally, the Contractor agrees to submit a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance, or mixture containing such substance, pursuant to M.G.L. c. 111F §§ 8, 9, and 10, and the regulations contained in 441 CMR § 21.06 when deliveries are made.

### 7.1.16.16 Small Business Purchasing Program (SBPP)

A Contractor may be eligible to participate in the SBPP, created pursuant to Executive Order 523, if qualified through the SBPP COMMBUYS subscription process at: www.commbuys.com and with acceptance of the terms of the SBPP participation agreement.

### 7.1.16.17 Other Damages

The term “other damages” shall include, but shall not be limited to, the reasonable costs the MBTA incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a Contract. “Other damages” shall not include damages to the MBTA as a result of third party claims, provided, however, that the foregoing in no way limits the MBTA’s right of recovery for personal injury or property damages or patent and copyright infringement under *Section 7.1.10* nor the MBTA’s ability to join the contractor as a third party defendant. Further, the term “other damages” shall not include, and in no event shall the contractor be liable for, damages for the MBTA’s use of contractor provided products or services, loss of MBTA records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the MBTA. In no event shall “other damages” exceed the greater of \$100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. *Section 7.1.10* sets forth the contractor’s entire liability under a Contract. Nothing in this section shall limit the MBTA’s ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference *Section 7.1.10* of the MBTA Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement.

### 7.1.16.18 Northern Ireland Certification

Pursuant to G.L. c. 7 s. 22C for state agencies, state authorities, the House of Representatives or the state Senate, by signing this Contract the Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas,



armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

#### **7.1.16.19 Pandemic, Disaster or Emergency Performance**

In the event of a serious emergency, pandemic or disaster outside the control of the MBTA, the MBTA may negotiate emergency performance from the Contractor to address the immediate needs of the MBTA even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

#### **7.1.16.20 Subcontractor Performance**

The Contractor certifies full responsibility for Contract performance, including subcontractors, and that comparable Contract terms will be included in subcontracts, and that the Department will not be required to directly or indirectly manage subcontractors or have any payment obligations to subcontractors.

### **7.1.17 Executive Orders**

For covered Executive state Departments, the Contractor certifies compliance with applicable Executive Orders (see also Massachusetts Executive Orders), including but not limited to the specific orders listed below. A breach during period of a Contract may be considered a material breach and subject Contractor to appropriate monetary or Contract sanctions.

#### **7.1.17.1 Executive Order 481. Prohibiting the Use of Undocumented Workers on State Contracts**

For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established, by signing this Contract the Contractor certifies under the pains and penalties of perjury that they shall not knowingly use undocumented workers in connection with the performance of this Contract; that, pursuant to federal requirements, shall verify the immigration status of workers assigned to a Contract without engaging in unlawful discrimination; and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker

#### **7.1.17.2 Executive Order 130. Anti-Boycott**

The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott (See IRC § 999(b)(3)- (4), and IRS Audit Guidelines Boycotts) or engages in conduct declared to be unlawful by G.L. c. 151E, s. 2. A breach in the warranty, representation, and agreement contained in this paragraph, without limiting such other rights as it may have, the MBTA shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

#### **7.1.17.3 Executive Order 346. Hiring of State Employees By State Contractors**

Contractor certifies compliance with both the conflict of interest law G.L. c. 268A specifically s. 5 (f) and this order; and includes limitations regarding the hiring of state employees by private companies contracting with the MBTA. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

#### **7.1.17.4 Executive Order 444. Disclosure of Family Relationships**



### **with Other State Employees**

Each person applying for employment (including Contract work) within the Executive Branch under the Governor must disclose in writing the names of all immediate family related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

#### **7.1.17.5      Executive Orders 523, 526, and 565**

Executive Order 523 (Establishing the Massachusetts Small Business Purchasing Program). Executive Order 526 (Order Regarding Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action which supersedes Executive Order 478). Executive Order 565 (Reaffirming and Expanding the Massachusetts Supplier Diversity Program). All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices. The Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices. The Contractor also commits to purchase supplies and services from certified minority, women, veteran, service-disabled veteran, LGBT or disability-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons; and Contractor commits to comply with any applicable Department contractual requirements pertaining to the employment of persons with disabilities pursuant to M.G.L. c. 7 s. 61(s). These provisions shall be enforced through the contracting Department, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

#### **7.1.17.6    Laws and Regulations Prohibiting Discrimination and Human Trafficking**

Contractors acknowledge and certify as a condition of this Contract that they are responsible for complying fully with all state and federal laws prohibiting discrimination, human trafficking, and forced labor, including but not limited to Chapter 178 of the Acts of 2011.

### **7.1.18    Supplemental Provisions**

#### **7.1.18.1    Applicability**

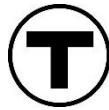
Where applicable, these Supplemental Provisions shall apply to this IFB # 107F-23. In the event of a conflict or disparity between these Supplemental Provisions and Standard Terms & Conditions, the Supplemental Provisions govern.

#### **7.1.18.2    Right-of-Way Safety Requirements**

In the event the Contractor's work is to be performed in proximity (within 10 feet) of MBTA rail transit lines, tracks, yards, or any other parts of the Green, Orange, Blue, Red, and Mattapan Lines, Contractor personnel shall obtain and maintain appropriate Right of Way (ROW) safety training, including recertifications, from the MBTA before commencing work.

Alternately, in the event that the Contractor requires access to a bus tunnel, busway, and/or bus yard the Contractor shall obtain and maintain appropriate Right of Way (ROW) safety training, including recertifications, from the MBTA before commencing work.

Additionally, the Contractor shall:



- (a) Ensure its personnel who access or work near the ROW attend an initial eight (8) hour ROW Safety course to receive a ROW license and maintain ROW Safety certification in compliance with the 24-month recertification training renewal schedule. The training and recertifications are at no cost to the Contractor.
- (b) Obtain and comply with the latest revision of the MBTA's requirements for personal protective equipment as outlined in the current ROW Safety policies and summarized at <https://www.mbta.com/engineering/safety-resources>
- (c) Supply its personnel with personal protective equipment that meets the MBTA's requirements and ensure that its personnel properly utilize such equipment in accordance with MBTA requirements.

#### 7.1.18.3 Performance Guarantee

A Performance Guarantee in the amount of **Enter % here**% of the Contract value is required by the Authority to ensure faithful performance of the Contract. The Performance Guarantee may be either a Performance Bond or an Irrevocable Stand-By Letter of Credit and shall remain in full force for the term of this Agreement. The successful Contractor shall certify that it shall provide the requisite Performance Guarantee to the Authority within ten (10) business days from Contract execution in accordance with the following minimum requirements:

- (a) **Performance Bond.** The Bidder shall furnish with its bid proposal, certification that a Performance Bond in the amount of **Enter % here**% will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide with its proposal a similar statement from its surety. The Authority requires all Performance Bonds to be secured through an insurance company (or companies) which is / are licensed in the Commonwealth of Massachusetts or which is/are approved by the Authority. The insurance company must have a rating of B+ or better. The name of the agency or agent writing the bond shall be identified with or on the bond.
- (b) **Irrevocable Stand-By Letter of Credit.** If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish, with its bid proposal, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from a United States banking institution certifying that an Irrevocable Stand-By Letter of Credit to support the Bidder's performance, in form and substance acceptable to the MBTA, will be provided if the Contract is awarded to the Bidder. Bidder should contact the MBTA for more information if it wishes to pursue this option.

#### OR (Buyer to update)

There is no Performance Guarantee required for this contract.



#### **7.1.18.4 Liquidated Damages**

There are no Liquidated Damages required for this contract.

#### **7.1.18.5 Security Requirements**

There are no Security Requirements for this contract.

### **7.1.19 Federal Requirements**

#### **7.1.19.1 Federal Transit Administration Required Clauses**

Contractor shall ensure that all clauses applicable to its work, or service, performed for the MBTA pursuant to this contract are adhered to by the contractor and sub-contractors when applicable.

In the event of a conflict between these FTA required clauses and other Terms and Conditions with respect to this contract, these clauses shall govern.

(FTA Required Clauses follow)

It is the responsibility of the proposer/ bidder to ensure that all clauses applicable to the work or services related to this contract are adhered to by the Contractor and its Sub-contractors when applicable.

<b>Contract Clause</b>	<b>Applicability to Type of Contract</b>
Fly America Requirements	When Transportation Paid by FTA Funds
Buy America Requirements	Value > 150K for Construction, Goods, Rolling Stock
Charter Bus Requirements	Operational Service
School Bus Requirements	Operational Service
Cargo Preference Requirements	Equipment/Material/Commodities Transported by Ocean
Seismic Safety Requirements	New Construction/Additions
Special Department of Labor (DOL) Equal Employment Clause	Value > \$10K for Construction
Energy Conservation Requirements	All
Clean Water Requirements	Value > \$100K
Bus Testing	Rolling Stock Acquisition
Pre-Award and Post Delivery Audit Requirements	Rolling Stock Acquisition
Lobbying	All
Access to Records and Reports	All
Federal Changes	All
Bonding Requirements	Construction > \$100K
Clean Air	Value > \$100K
Recycled Products	Value > \$10K In Fiscal Year
Davis-Bacon and Copeland Anti-Kickback	Construction > \$2000



	Contract Clause	Applicability to Type of Contract
	Acts	
	Contract Work Hours and Safety Standards Act	Construction >\$2000, Rolling Stock, Operational >\$2,500
	No Government Obligation to Third Parties	All
	Program Fraud and False or Fraudulent statements and Related Acts	All
	Termination	Value > \$10K
	Government-Wide Debarment and Suspension (Non-procurement)	Value > \$25K
	Privacy Act	All
	Civil Rights Requirements	All
	ADA Access Requirements	All
	Breaches and Dispute Resolution	Value > \$100K
	Patent and Rights in Data	Research Projects Only
	Transit Employee Protective Agreements	Transit Operations
	Disadvantaged Business Enterprise (DBE)	All
	Incorporation of FTA Terms	All
	Drug and Alcohol Testing	Operational Service/Safety Sensitive
	Transit Vehicle Manufacturer (TVM) Certifications	Rolling Stock, All Vehicle Procurements
	Metric Requirements	Sealed Bid Procurements, Rolling Stock, Construction
	Conformance with National ITS Architecture	Contracts and Solicitations for ITS projects only
	Corridor Preservation	Right of Way Development
	Veterans Employment	Capital Projects

### 7.1.19.2 Fly American Requirements

#### 49 U.S.C. §40118 41 CFR Part 301-10.131 - 301-10.143

**Applicability to Contracts:** The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

**Flow Down Requirements:** The Fly America requirements flow down from MBTA to first tier contractors, who are responsible for ensuring that lower tier contractors and sub-contractors are in compliance.



**Fly America:** The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10.131 - 301-10.143, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

#### 7.1.19.3 Buy America Requirements

**49 U.S.C. 5323(j)**

**49 U.S.C. 5323(h)**

**49 CFR Part 661**

**Applicability to Contracts:** The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000).

**Flow Down Requirements:** The Buy America requirements flow down from MBTA to first tier Contractor, who are responsible for ensuring that lower tier contractors and sub-contractors are in compliance.

**Buy America:** The Contractor agrees to comply with 49 U.S.C. 5323(j) as amended by MAP-21, 49 U.S.C. 5323(h), 49 CFR Part 661, and FAST Act (Pub. L. 114-94) which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7 and was amended by Section 3011 of the FAST Act (Pub. L. 114-94). Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a sixty percent (60%) domestic content for FY16 & FY17; sixty-five percent (65%) domestic content for FY18 & FY19; and seventy percent (70%) domestic content for FY20 & beyond.

General waivers for small purchases do not apply to Contractor's equipment purchases when Contractor's contract value exceeds \$150,000 in value. Contractor must submit to MBTA the appropriate Buy America certification using **Form H: Buy America Certification Form** with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier sub-contractors.

#### 7.1.19.4 Charter Bus Requirements

**49 U.S.C. 5323(d) 49 CFR Part 604**

**Applicability to Contracts:** The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

**Flow Down Requirements:** The Charter Bus requirements flow down from MBTA to first tier service Contractors.

**Charter Service Operations:** The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

#### 7.1.19.5 School Bus Requirements



## 49 U.S.C. 5323(F) 49 CFR Part 605

**Applicability to Contracts:** The School Bus requirements apply to the following type of contract: Operational Service Contracts.

**Flow Down Requirements:** The School Bus requirements flow down from MBTA to first tier service contractors.

**School Bus Operations:** Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and sub-recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub-recipients may not use federally funded equipment, vehicles, or facilities.

### 7.1.19.6 Cargo Preference Requirements

## 46 U.S.C. 55305

**Applicability to Contracts:** The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

**Flow Down Requirements:** The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

**Cargo Preference: Use of United States-Flag Vessels** - The contractor agrees:

- (i) To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- (ii) To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)
- (iii) To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**Cargoes Procured, Furnished, or Financed by the United States Government:**

1. **Definition:** In this section, the term "privately-owned commercial vessel of the United States" does not include a vessel that, after September 21, 1961, was built or rebuilt outside the United States or documented under the laws of a foreign country, until the vessel has been documented under the laws of the United States for at least three (3) years.
2. **Minimum Tonnage:** When the United States Government procures, contracts for, or otherwise obtains for its own account, or furnishes to or for the account of a foreign country, organization, or persons without provision for reimbursement, any equipment, materials, or commodities, or provides financing in any way with Federal funds for the account of any persons unless otherwise exempted, within or without the United States, or advances funds or credits, or guarantees the convertibility of foreign currencies in connection with the furnishing or obtaining of the equipment, materials, or commodities, the appropriate agencies shall take steps necessary and practicable to ensure that at least fifty percent (50%) of the gross tonnage of the equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) which may



be transported on ocean vessels is transported on privately-owned commercial vessels of the United States, to the extent those vessels are available at fair and reasonable rates for commercial vessels of the United States, in a manner that will ensure a fair and reasonable participation of commercial vessels of the United States in those cargoes by geographic areas.

- 3. Waivers:** The President, the Secretary of Defense, or Congress (by concurrent resolution or otherwise) may waive this section temporarily by:

- i. Declaring the existence of an emergency justifying a waiver; and
- ii. Notifying the appropriate agencies of the waiver.

**4. Programs of Other Agencies:**

- i. Each department or agency that has responsibility for a program under this section shall administer that program with respect to this section under regulations and guidance issued by the Secretary of Transportation. The Secretary, after consulting with the department or agency or organization or person involved, shall have the sole responsibility for determining if a program is subject to the requirements of this section.
- ii. The Secretary:
  1. Shall conduct an annual review of the administration of programs determined pursuant to paragraph (1) as subject to the requirements of this section;
  2. May direct agencies to require the transportation on United States-flagged vessels of cargo shipments not otherwise subject to this section in equivalent amounts to cargo determined to have been shipped on foreign carriers in violation of this section;
  3. May impose on any person that violates this section, or a regulation prescribed under this section, a civil penalty of not more than \$25,000 for each violation willfully and knowingly committed, with each day of a continuing violation following the date of shipment to be a separate violation; and
  4. may take other measures as appropriate under the Federal Acquisition Regulations issued pursuant to section 25(c)(1) 1 of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1) 2 or contract with respect to each violation.

**5. Security of Government-Impelled Cargo:**

- i. In order to ensure the safety of vessels and crewmembers transporting equipment, materials, or commodities under this section, the Secretary of Transportation shall direct each department or agency (except the Department of Defense), when responsible for the carriage of such equipment, materials, or commodities, to provide armed personnel aboard vessels of the United States carrying such equipment, materials, or commodities if the vessels are transiting high-risk waters.
- ii. The Secretary of Transportation shall direct each department or agency responsible to provide armed personnel under paragraph (1) to reimburse, subject to the availability of appropriations, the owners or operators of applicable vessels for the cost of providing armed personnel.
- iii. In this subsection, the term "high-risk waters" means waters so designated by the Commandant of the Coast Guard in the Port Security Advisory in effect on the date on which an applicable voyage begins.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1642; Pub. L. 110–417, div. C, title XXXV, §3511(a), (b), Oct. 14, 2008, 122 Stat. 4769; Pub. L. 112–213, title V, §503, Dec. 20, 2012, 126 Stat. 1575.)

#### **7.1.19.7 Seismic Safety Requirements**

**42 U.S.C. 7701 et seq.**

**49 CFR Part 41**



**Applicability to Contracts:** The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

**Flow Down Requirements:** The Seismic Safety requirements flow down from MBTA to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all sub-contractors.

**Seismic Safety:** The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a sub-contractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project. The contractor will facilitate and follow Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. 7704 note, except as the Federal Government determines otherwise in writing.

#### **7.1.19.8      Special DOL Equal Employment Clause**

##### **41 CFR Part 60**

See Section 7.1.19.26 – Civil Rights Requirements.

#### **7.1.19.9      Energy Conservation Requirements**

##### **42 U.S.C. 6321 et seq. 49 CFR Part 622**

**Applicability to Contracts:** The Energy Conservation requirements are applicable to all contracts.

**Flow Down Requirements:** The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and, sub-recipients and their sub-agreements at every tier.

**Energy Conservation:** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act. The contractor agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, "Requirements for Energy Assessments," 49 CFR part 622, subpart C.

#### **7.1.19.10     Clean Water Requirements**

##### **33 U.S.C. 1251 - 1377**

**Applicability to Contracts:** The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

**Flow Down Requirements:** The Clean Water Act requirements flow down to MBTA third party contractors and their contracts at every tier, and sub-recipients and their sub-agreements at every tier.

##### **Clean Water:**

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. 1251 – 1377 et seq.
2. The contractor agrees to report each violation to MBTA and understands and agrees that MBTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office in compliance with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368



3. The contractor agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f – 300j-6.
4. The contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **7.1.19.11 Bus Testing**

**49 U.S.C. 5318(e)**

**49 U.S.C. 5323(c)**

**49 CFR Part 665**

**Applicability to Contracts:** The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

**Flow Down Requirements:** The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in the most current FTA Master Agreement.

**Bus Testing:** The Contractor [Manufacturer] agrees to comply with 49 U.S.C. 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- i. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- ii. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- iii. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- iv. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

#### **7.1.19.12 Pre-Award and Post-Delivery Audits Requirements**

**49 U.S.C. 5323**

**49 C.F.R. 661.12 49 CFR Part 663**

**Applicability to Contracts:** These requirements apply only to the acquisition of Rolling Stock/Turnkey.

**Flow Down Requirements:** These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

A Buy America certification under this part shall be issued in addition to any certification which may be required by part 661 of this title. Nothing in this part precludes FTA from conducting a Buy America investigation under part 661 of this title "Pre-Award and Post-Delivery Audit Requirements" - The Contractor agrees to comply with "Buy America Requirements--Surface Transportation Assistance Act of



1982, as amended," 49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

**Pre-Award and Post-Delivery Audit Requirements** - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

- i. **Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Firm certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; 2) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- ii. **Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
- iii. **Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit a) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or b) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

#### **7.1.19.13 Lobbying**

**31 U.S.C. 1352**

**49 CFR Part 19**

**49 CFR Part 20**

**Applicability to Contracts:** The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

**Flow Down Requirements:** The Lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment 31 U.S.C. §1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a Federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier certifies to the tier above that it will not and has not taken any action involving the Project or the Underlying Agreement for the Project, including any award, extension, or modification. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to MBTA.

#### **7.1.19.14 Access to Records and Reports**

**49 U.S.C. 5325**

**18 CFR 18.36(i)**

**49 CFR 633.17**

**Applicability to Contracts:** Reference Chart "Requirements for Access to Records and Reports by Type of Contracts," Item 6 of this Section.

**Flow Down Requirements:** FTA does not require the inclusion of these requirements in subcontracts.

**Access to Records:** The following access to records requirements apply to this Contract:



1. The Contractor agrees to provide MBTA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where MBTA or a sub-grantee of MBTA in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a) 1) through other than competitive bidding, the Contractor shall make available records related to the contract to MBTA, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
3. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
4. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until MBTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).
5. FTA does not require the inclusion of these requirements in subcontracts.
6. **Requirements for Access to Records and Reports by Types of Contract**



Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>Non-State Grantees</u>						
<b>a) Contracts below SAT (\$100,000)</b>	Yes <sup>1</sup>	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
<b>b) Contracts above \$100,000 / Capital Projects</b>	Yes <sup>1</sup>		Yes	Yes	Yes	Yes

Sources of Authority: 1 18 CFR 18.36 (i)

#### 7.1.19.15 Federal Changes

##### 49 CFR Part 18

**Applicability to Contracts:** The Federal Changes requirement applies to all contracts.

**Flow Down Requirements:** The Federal Changes requirement flows down appropriately to each applicable changed requirement.

**Federal Changes:** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between MBTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

#### 7.1.19.16 Bonding Requirements

This section applies only to construction or facility improvement contracts exceeding \$100,000.

#### 7.1.19.17 Clean Air

##### 42 U.S.C. 7401 – 7601(q)

##### 40 CFR 15.61

##### 49 CFR Part 18

**Applicability to Contracts:** The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

**Flow Down Requirements:** The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

##### Clean Air:

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7601(q) et seq . The Contractor agrees to report each violation to MBTA and understands and agrees that MBTA,



in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **7.1.19.18 Recycled Products**

**42 U.S.C. 6962**

**40 CFR Part 247**

**Executive Order 12873**

**Applicability to Contracts:** The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Contractor procures \$10,000 or more of one (1) of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds.

**Flow Down Requirements:** These requirements flow down to all contractor and sub-contractor tiers.

**Recovered Materials:** The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR part 247.

#### **7.1.19.19 Davis-Bacon and Copeland Anti-Kickbacks Acts**

**49 U.S.C. 5333**

**40 U.S.C. 3141 – 3144**

**40 U.S.C. 3146 – 3147**

**18 U.S.C. 874**

**40 U.S.C. 3145**

**Applicability to Contracts:** The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 FR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

**Flow Down Requirements:** Applies to third party contractors and sub-contractors

- 1. Minimum Wages:**

- (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than



Monthly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one (1) classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its sub-contractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

- (A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
    - (1) Except with respect to helpers as defined as 29 CFR 5.2(n) (4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
    - (2) The classification is utilized in the area by the construction industry; and
    - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
    - (4) With respect to helpers as defined in 29 CFR 5.2(n) (4), such a classification prevails in the area in which the work is performed.
  - (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and shall advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.
  - (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and shall advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.
  - (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay



the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. **Withholding:** MBTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any sub-contractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, MBTA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. **Payrolls and Basic Records.**

- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

- (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to MBTA for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government



Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all sub-contractors.

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or sub-contractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
  - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
  - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or sub-contractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or sub-contractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or sub-contractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and Trainees:

- (i) **Apprentices** - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates



(expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Sub-contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) **Trainees** - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
  - (iii) **Equal Employment Opportunity** - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.
5. **Compliance with Copeland Act requirements:** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
  6. **Subcontracts:** The contractor or sub-contractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any sub-contractor or lower tier sub-contractor with all the contract clauses in 29 CFR 5.5.
  7. **Contract termination: Debarment:** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a sub-contractor as provided in 29 CFR 5.12.



8. **Compliance with Davis-Bacon and Related Act Requirements:** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. **Disputes Concerning Labor Standards:** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its sub-contractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. **Certification of Eligibility:**
  - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or Contractor who has an interest in the contractor's Contractor is a person or Contractor ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - (ii) No part of this contract shall be subcontracted to any person or Contractor ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.  
**(b) Contract Work Hours and Safety Standards Act.** The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or §4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.
1. **Overtime requirements.** No contractor or sub-contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and sub-contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or sub-contractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.



4. **Subcontracts.** The contractor or sub-contractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any sub-contractor or lower tier sub-contractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or sub-contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or sub-contractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or sub-contractor will permit such representatives to interview employees during working hours on the job.

The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

**OMB Control Number**

- (a)(1)(ii)(B) 1215-0140
- (a)(1)(ii)(C) 1215-0140
- (a)(1)(iv) 1215-0140
- (a)(3)(i) 1215-0140, 1215-0017
- (a)(3)(ii)(A) 1215-0149
- (c) 1215-0140,  
1215-0017

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

Effective Date Note: At 58 FR 58955, Nov. 5, 1993, §5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

**7.1.19.20 Contract Work Hours and Safety Standards Act**

**29 CFR Part 5**

**40 U.S.C. 3701 et seq.**

**40 U.S.C. 3702**

**Applicability to Contracts:** The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b) (1) (B) (iii) and (b) (2), 29 CFR 5.2(h), 49 CFR 18.36(i) (6).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work” with a value greater than \$100,000. These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12)



**Flow Down Requirements:** Applies to third party contractors and sub-contractors.

- a. **Overtime Requirements:** No contractor or sub-contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- b. **Violation; Liability for Unpaid Wages; Liquidated Damages:** In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and sub-contractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- c. **Withholding for Unpaid Wages and Liquidated Damages:** MBTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or sub-contractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- d. **Subcontracts:** The Contractor or sub-contractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any sub-contractor or lower tier sub-contractor with the clauses set forth in paragraphs (1) through (4) of this section.

#### **7.1.19.21    No Government Obligation to Third Parties**

**Applicability to Contracts:** Applicable to all contracts.

**Flow Down Requirements:** This concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

#### **No Obligation by the Federal Government.**

1. MBTA and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to MBTA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the sub-contractor who will be subject to its provisions.

#### **7.1.19.22    Program Fraud and False or Fraudulent Statements and Related Acts**

#### **31 U.S.C. 3801 et seq.**



**49 CFR Part 31**  
**18 U.S.C. 1001**  
**49 U.S.C. 5307**

**Applicability to Contracts:** These requirements are applicable to all contracts.

**Flow Down Requirements:** These requirements flow down to contractors and sub-contractors who make, present, or submit covered claims and statements.

**Program Fraud and False or Fraudulent Statements or Related Acts**

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two (2) clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the sub-contractor who will be subject to the provisions.

**7.1.19.23 Termination & Cancellation**

**49 CFR Part 18**  
**FTA Circular 4220.1F**

For termination, see Item 5 of the Federal Section of the MBTA Purchase Order Terms and Conditions. For cancellation, see Section 8 of the MBTA Purchase Order Terms and Conditions.

**7.1.19.24 Government-Wide Debarment and Suspension (Non-Procurement)**

**49 CFR 18**  
**2 CFR 1200**  
**2 CFR 180**  
**Executive Orders 12549 and 12689**  
**31 U.S.C. 6101**

**Background and Applicability:** In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, sub-contractor, supplier, Contractor, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered non-procurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation non-procurement suspension and debarment requirements to all lower tiers of subcontracts



under covered non-procurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180). This government-wide regulation implements Executive Order 12549, Debarment and Suspension, Executive Order 12689, Debarment and Suspension, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

These provisions apply to all MBTA contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for federally required auditing services. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and sub-contractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System (EPLS), (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract.

Grantees, contractors, and sub-contractors who enter into covered transactions also must require the entities they contract with to comply 2 CFR 180 and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

**Flow Down Requirements:** These requirements flow down to contractors and sub-contractors at all levels.

**Suspension and Debarment:** This contract is a covered transaction for purposes of 49 CFR Part 18. As such, the contractor is required to verify that none of the contractor, its principals, are excluded or disqualified as defined under Executive Orders Nos. 12549 and 12689.

The contractor is required to comply with 2 CFR 1200, and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its Proposal, the Proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by MBTA. If it is later determined that the Firm knowingly rendered an erroneous certification, in addition to remedies available to MBTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Firm agrees to comply with the requirements 2 CFR 180 while this offer is valid and throughout the period of any contract that may arise from this offer. The Firm further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### 7.1.19.25 Privacy Act

##### 5 U.S.C. 552

**Applicability to Contracts:** When MBTA maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

**Flow Down Requirements:** The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

**Contracts Involving Federal Privacy Act Requirements:** The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- a. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

#### 7.1.19.26 Civil Rights Requirements



**29 U.S.C. § 623, 42 U.S.C. § 2000 42 U.S.C. § 6102, 42 U.S.C. § 12112 42 U.S.C. § 12132, 49 U.S.C. § 5332 29 CFR Part 1630, 41 CFR Parts 60 et seq.**

The MBTA is an Equal Opportunity Employer. As such, the MBTA agrees to comply with all applicable civil rights statutes and implementing regulations issued by the FTA. Apart from inconsistent requirements imposed by Federal statutes or regulations, the MBTA agrees to comply with the requirements of 49 U.S.C. § 5323(h)(2) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

- a. The Contractor will be required to comply with these applicable civil rights, nondiscrimination, and equal employment opportunity laws and regulations:
  1. 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 26, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, et seq., 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6101 – 6107, 42 U.S.C. § 12101, et seq., 42 U.S.C. § 12132, 49 U.S.C. § 5307 (c)(1)(D)(ii), 49 U.S.C. § 5332,
  2. 29 CFR Part 1630, 41 CFR Part 60, 29 U.S.C. § 623, 42 U.S.C. § 2000e, 42 U.S.C. § 12112,
  3. 49 U.S.C. § 5325 (k).
  4. Fixing America's Surface Transportation (FAST) Act, Public Law No: 114-94, as may be amended.
- b. The Civil Rights requirements flow down to all third party sub-contractors and their subcontracts at every tier.
- c. The following requirements apply to a contract awarded as a result of this solicitation:
  1. **Nondiscrimination** - In accordance with U.S. Department of Transportation (DOT), Federal, the Rehabilitation Act of 1973, as amended, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6102, 42 U.S.C. § 6101 – 6107, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, 42 U.S.C. § 12132, Federal transit law 49 U.S.C. § 5307 (c)(1)(D)(ii), Federal transit law 49 U.S.C. § 5332, FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients.", DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations, Executive Order No. 13166 and DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (70 FR 74087, Dec. 14, 2005), the Unruh Civil Rights Act, the Contractor agrees that it will comply with the identified Federal laws and regulations, pertaining to MBTA programs and activities, to ensure that no person will be denied the benefits of, or otherwise be subjected to, discrimination (particularly in the level and quality of transportation services and transportation-related benefits) on the bases of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, marital status, genetic information, medical condition, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations, other implementing requirements that DOT or FTA may issue, and any other applicable Federal statutes and/or regulations that may be signed into law or promulgated.
  2. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to a contract awarded as a result of this solicitation:
    - a. **Race, Color, Ancestry, Marital Status, Medical Condition, Genetic Information, Religion, National Origin, Sex, Sexual Orientation, Gender Identity, Gender**



**Expression** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 49 U.S.C. § 5332, FTA Circular 4704.1, "Equal Employment Program Guidelines for Grant Recipients", and , the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, including "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60, et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), Fair Employment and Housing Act, and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, ancestry, religion, marital status, medical condition, genetic information, national origin, sex, sexual orientation, gender identity, gender expression, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue, and any other applicable Federal statutes that may be signed into law or Federal regulations that may be promulgated.

- b. **Sex** – The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1975, as amended, 20 U.S.C. § 1681, and 49 CFR part 25. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
- c. **Age** - The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, 45 CFR part 90, the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, and Equal Employment Opportunity Commission (EEOC) implementing regulations 29 CFR part 1625. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
- d. **Disabilities** - The Contractor agrees to comply with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(d), 36 CFR part 1194, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, 49 CFR parts 27, 37, 38, and 39, and FTA Circular 4710.1, "Americans with Disabilities Act: Guidance". In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
- d. The Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

#### 7.1.19.27 ADA Access Requirements

##### 49 U.S.C. § 5301, 29 U.S.C. § 794, 42 U.S.C. § 12101

**Applicability to Contracts:** The Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq.,



which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Contractor shall also comply with the following regulations, as applicable, and any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
2. U.S. DOT regulations, "nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
3. U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
4. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
5. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
6. General Services Administration regulations, "Accommodations for the Physically Handicapped,: 41 C.F.R. Subpart 101-19;
7. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
8. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
9. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

#### **7.1.19.28 Breaches and Dispute Resolution**

##### **49 CFR Part 18 FTA Circular 4220.1F**

**Applicability to Contracts:** All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

**Flow Down Requirements:** The Breaches and Dispute Resolutions requirements flow down to all tiers.

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of MBTA. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the MBTA. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of MBTA shall be binding upon the Contractor and the Contractor shall abide by the decision.



**Performance During Dispute** - Unless otherwise directed by MBTA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the MBTA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the MBTA is located.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by MBTA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### **7.1.19.29 Patent and Rights in Data**

##### **37 CFR Part 401 49**

##### **CFR Parts 18 and 19**

**Applicability to Contracts:** Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

**Flow Down Requirements:** The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

#### **CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK**

(A) **Rights in Data** - The following requirements apply to each contract involving experimental, developmental or research work:

1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
  - a. Except for its own internal use, MBTA or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may MBTA or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.



- b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
    - i. Any subject data developed under that contract, whether or not a copyright has been obtained; and
    - ii. Any rights of copyright purchased by MBTA or Contractor using Federal assistance in whole or in part provided by FTA.
  - c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, MBTA and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for MBTA or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
  - d. Unless prohibited by state law, upon request by the Federal Government, MBTA and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by MBTA or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither MBTA nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
  - e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
  - f. Data developed by MBTA or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that MBTA or Contractor identifies that data in writing at the time of delivery of the contract work.
- 3. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
  - 4. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), MBTA



and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Contractors under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

5. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(B) **Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:

1. General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, MBTA and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), MBTA and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Contractors Under" Government Grants, Contracts and Cooperative Agreements,: 37 C.F.R. Part 401.
3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

#### 7.1.19.30    Transit Employee Protective Agreements

##### 49 U.S.C. § 5310, § 5311, and § 5333 29 CFR Part 215

**Applicability to Contracts:** The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

**Flow Down Requirements:** These provisions are applicable to all contracts and subcontracts at every tier.

1. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to MBTA's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.



2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

#### **7.1.19.31      Incorporation of Federal Transit Administration (FTA) Terms**

##### **FTA Circular 4220.1F**

**Applicability to Contracts:** The incorporation of FTA terms applies to all contracts and subcontracts at every tier.

**Flow Down Requirements:** The incorporation of FTA terms has unlimited flow down.

**Incorporation of Federal Transit Administration (FTA) Terms:** The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the most current FTA Circular 4220, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MBTA requests which would cause MBTA to be in violation of the FTA terms and conditions.

#### **7.1.19.32      Drug and Alcohol Testing**

##### **49 U.S.C. §5331**

##### **49 CFR Part 655**

##### **49 CFR Part 382**

**Applicability to Contracts:** The Drug and Alcohol testing provisions apply to Operational Service Contracts.

**Flow Down Requirements:** Anyone who performs a safety-sensitive function for the recipient or sub-recipient is required to comply with 49 CFR 655 as amended by MAP-21, with certain exceptions for contracts involving maintenance services. Maintenance CONSULTANTS for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance sub-contractors.



**Drug and Alcohol Testing:** The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, or MBTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The contractor agrees further to certify annually its compliance with Part 655 before June 30 and to submit the Management Information System (MIS) reports before January 15 to MBTA. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

#### **7.1.19.33    Transit Vehicle Manufacturer (TVM) Certifications**

##### **49 CFR Part 26**

49 CFR §26.49 Contractor must submit to MBTA a certification from each transit vehicle manufacture that desires to bid or propose upon a DOT-assisted transit vehicle procurement that it has complied with the requirements of 49 CFR §26.49. MBTA may, however, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the overall goal-setting procedures.

#### **7.1.19.34    Metric Requirements**

##### **15 U.S.C. §§205**

##### **2007-Pub. L. 110-69**

As required by U.S. DOT or FTA, MBTA agrees to use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the MBTA agrees to accept products and services with dimensions expressed in the metric system of measurement.

#### **7.1.19.35    National Intelligent Transportation Systems (ITS) Architecture and Standards**

##### **23 U.S.C. Section 517(d)**

##### **23 U.S.C. §502**

Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

#### **7.1.19.36    Corridor Preservation**

##### **49 U.S.C. 5323(q)**

The Recipient agrees not to develop right-of way acquired under 49 U.S.C. § 5323(q), as amended by MAP-21, in anticipation of its Project until all required environmental reviews for that Project have been completed.

#### **7.1.19.37    Veterans Employment**

##### **49 U.S.C. 5325 (k)**

Veterans Employment. As provided by 49 U.S.C. § 5325(k):



To the extent practicable, Contractor agrees that it:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and

Contractor also assures that its sub-contractor will:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

#### **7.1.19.38 Air Quality / EPA and Fuel Economy**

Applicable requirements of EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93.

The Contractor should be aware that the following EPA regulations, among others, may apply to its Project: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 6.00.

#### **7.1.19.39 Federal Tax Liability and Recent Felony Convictions**

##### **Consolidated Appropriations Act 2019, Pub. L. 116-6, div. D, Title VII, Sections 744-745**

**Applicability to Contracts:** The requirements apply to any Third-Party Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association ("Third-Party Participant").

The Third-Party Participant must provide a certification that the Third-Party Participant:

1. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
2. Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

MBTA shall not enter into any agreement with a Third-Party Participant unable to provide such certification without written FTA approval.



**Flow Down Requirements:** The requirements flow down from MBTA to first tier contractors, who are responsible for ensuring that all lower tier contractors and sub-contractors are in compliance, without regard to the value of any subagreement.

#### **7.1.19.40      Compliance with the National Defense Authorization Act**

##### **Public Law 115-232**

###### **Applicability to Contracts:**

On all contracts, the “Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment” Regulation (2 CFR 200.216) prohibits the Contractor from using or furnishing the following telecommunications equipment or services:

1. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
2. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
3. Telecommunications or video surveillance services provided by such entities or using such equipment.
4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

This prohibition applies to all products manufactured by the aforementioned companies, including any individual components or parts.

By submitting a bid, the Contractor certifies that all services, equipment and work will be in compliance with the terms of 2 CFR 200.216.

#### **7.1.20      Federal Requirements – Disadvantaged Business Enterprises**

##### **7.1.20.1      Policy Statement**

The Massachusetts Bay Transportation Authority, hereinafter referred to as “the Authority” or “the MBTA,” has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. The Authority has received Federal financial assistance from the USDOT, and as a condition of receiving this assistance, the Authority has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Authority to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in contracts funded wholly or in part by USDOT funds. Further, in keeping with the spirit of growth and development, raising the bar to fulfill business needs and ensuring quality, the Authority will also provide networking opportunities, technical support, guidance and training to DBEs and contractors to support quality business partnerships.

It is the policy of the Authority to do the following:

1. Ensure non-discrimination in the award and administration of USDOT-assisted contracts.



2. Create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts.
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law.
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate in the DBE Program.
5. Help remove barriers to the participation of DBEs in USDOT-assisted contracts.
6. Assist the development of firms that can compete successfully in the market place outside the DBE Program.

In administering the DBE Program, the Authority will not do the following:

1. Exclude any person from participation in the award and performance of any contract on the basis of age, race, color, religion, sexual orientation, disability or national origin.
2. Directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of 49 CFR Part 26.
3. Use race- or gender-conscious participation set-asides on any USDOT-assisted contracts; but, race- or gender- neutral set-asides can be used as part of the MBTA Fostering Small Business Program.

Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the Authority in its financial assistance agreements with USDOT. The Assistant Secretary of the Office of Diversity and Civil Rights has been designated as the DBE Liaison Officer (DBELO), and has unimpeded and direct access to the General Manager. In that capacity, the Assistant Secretary is responsible for implementing all aspects of the DBE Program. The DBELO shall act in an administrative capacity in implementing the DBE Program throughout the Authority.

#### **7.1.20.2 Definitions**

Terms and definitions applicable to the USDOT DBE Program and these Provisions may be found at 49 CFR § 26.5 and related appendices and guidance pages.

#### **7.1.20.3 Contractor Assurances**

The contractor, subrecipient or any subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of the contractor or such other remedy as the Authority deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and / or
4. Disqualifying the contractor from future Bidding as non-responsible.

#### **7.1.20.4 Required Subcontract Provisions**

The contractor shall include the provisions of *Section 7.1.20.3 - Contractor Assurances* above in every subcontract, making those provisions binding on each subcontractor. The contract also shall include a copy of these Provisions, in their entirety, in every subcontract with a DBE firm which is, or may be, submitted for credit toward the contract's DBE participation goal. All subcontracts or agreements with DBEs to supply labor or materials, including but not limited to lower tier subcontracts, must be performed in accordance with these Provisions and 49 CFR Part 26.



#### 7.1.20.5 DBE Participation

- (a) **Affirmative Action Obligation.** Contractor shall take affirmative action to seek out and consider DBEs as subcontractors and / or suppliers of materials and services for this contract to achieve the stated DBE Participation Goal.
- (b) **DBE Participation Goal.** The Authority has established the following goal(s) for participation on this contract by DBEs. The applicable goal remains in effect throughout the life of the contract regardless of whether pre-identified DBE subcontractors remain on the Project or under contract:

Supplies and Services Contracts: DBE Participation Goal 0%.

- (c) **Eligibility of DBEs.** Only firms that have been certified by the Massachusetts Unified Certification Program (“MassUCP”) and confirmed by the Authority as eligible in accordance with 49 CFR Part 26 to participate as DBEs on federally aided Authority contracts may be used on this contract for credit toward the DBE participation goal.
- (d) **Massachusetts DBE Directory.** The Authority makes available to all Bidders / proposers the most current Massachusetts Disadvantaged Business Enterprise (DBE) Directory. This directory is made available for contractors’ convenience and is informational only. The Directory lists those firms that have been certified as eligible in accordance with the criteria of 49 CFR Part 26 to participate as DBEs on federally aided Authority contracts. The Directory also lists the kinds of work each firm is certified to perform, but does not constitute an endorsement of the quality of performance of any business, and does not represent the Authority’s subcontractor approval.

Contractors are encouraged to make use of the DBE Directory maintained by Massachusetts Supplier Diversity Office (“SDO”) on the Internet. This listing is updated daily and may be accessed at the SDO website at: <https://www.sdo.osd.state.ma.us/BusinessDirectory/BusinessDirectory.aspx>

- (e) **DBE Certification.** In order to be counted on a USDOT-assisted contract, a DBE must be certified in accordance with 49 CFR 26, Subparts C and D (Sections 26.51-26.55 and 26.61-26.73). A firm must apply to MassUCP for DBE certification to participate on federally aided Authority contracts. An applicant for DBE certification must identify the area(s) of work it seeks to perform on USDOT-assisted projects.
- (f) **DBE Joint Venture Approval.** To obtain recognition as



an approved DBE joint venture, the parties to the joint venture must provide to the Authority's Capital Delivery Prequalification Committee - at least ten (10) business days before the Bid / proposal opening date – a DBE / Non-DBE Joint Venture Affidavit in the form attached hereto, **Form G: Joint Venture Affidavit**, and including, but not limited to the following:

- A copy of the joint venture agreement;
- A description of the distinct, clearly defined portion of the contract work that the DBE will perform with its own forces; and,
- All such additional information as may be requested by the Authority for the purpose of determining whether the DBE joint venture is eligible.

The DBE joint venture must be approved by both the Authority's Office of Diversity and Civil Rights and the Authority's Capital Delivery Prequalification Committee.

- (g) **Counting DBE Participation Towards DBE Participation Goals.** In order for DBE participation to count toward the DBE participation goal, the DBE(s) must have served a commercially useful function in the performance of the contract and must have been paid in full for acceptable performance. The Authority will count DBE participation toward overall and contract goals as provided in 49 C.F.R. § 26.55.

#### **7.1.20.6 Requirements and Procedures before Contract Award**

- (a) **Bidders List.** Pursuant to 49 CFR § 26.11(c), the Authority must collect certain information from all Bidders / proposers to create a Bidders list. The Authority will survey each individual firm for this information directly. Failure to comply with a written request for this information within fifteen (15) business days may result in the suspension of Bidding privileges or other such sanctions, as provided for in these Provisions, until the information is received.
- (b) **Pre-Bid / Proposal Conference.** At the pre-bid / proposal conference which may be held with respect to this contract, the Authority shall be available to review with prospective Bidders / proposers the steps they must take to comply with these Provisions and to assist prospective Bidders / proposers with respect thereto. No action or failure to act of the Authority at the pre-bid / proposal conference shall in any way limit or otherwise affect the terms of these Provisions, or any portion thereof; however, Bidders / proposers shall be deemed to have notice of information made available with respect to these Provisions at the pre-bid / proposal conference. The Authority will be available to the prospective Bidders / proposers for review of and assistance with the



procedures for compliance with these Provisions for contracts that do not require a pre-bid / proposal conference.

**(c) Bid / Proposal Submission**

1. Each Bidder / proposer, as part of its Bid / proposal submission, shall submit the following:
  - a. A completed **Form E: Schedule of Participation by Disadvantaged Business Enterprises**, listing those DBEs with which the Bidder / proposer intends to contract.
    - i. The Bidder / proposer shall list only firms which have the capacity to perform, manage and supervise the work proposed in accordance with the requirements of 49 CFR Part 26.
    - ii. The listing of a DBE by a Bidder / proposer on its Schedule shall constitute a representation by the Bidder / proposer that, if it is awarded the contract, it will enter into a subcontract with such DBE for the scope of the work and at a price that is not less than that set forth in its Bid / proposal submission, subject to the terms of these Provisions and the contract.
  - b. A completed and signed original **Form D: DBE Letter of Intent** for each DBE listed in the Schedule, identifying the work the DBE will perform by NAICS Code and by specific description.
  - c. The most recent certification letter from MassUCP for each DBE listed in the Schedule of Participation by Disadvantaged Business Enterprises.
2. If the Authority determines at the time of Bid / proposal opening that the low Bidder / proposer has failed to include in its Bid / proposal package all of the required information, the Bidder / proposer will have the lesser of three (3) business days or five (5) calendar days from the date of notification of this failure to present the missing certification letter to the Authority.
3. In the event the scope of work listed on the Schedule is not sufficient to fulfill the stated goal, the Bidder / proposer shall submit a statement of good faith efforts of the reasons why it believes it is in compliance with these Provisions.
  - a. A statement of good faith efforts must include the types and extent of documentation identified in Appendix A to 49 CFR Part 26.
  - b. When a non-DBE subcontractor was selected over a DBE for work on the contract, the Bidder / proposer must provide copies of each DBE and non-DBE subcontractor quote submitted to the Bidder / proposer.

**(d) Evaluation of Good Faith Efforts**

- a. The apparent prevailing Bidder / proposer's attainment of the DBE participation goal or a satisfactory demonstration of good faith efforts is a prerequisite for award of the contract. The Authority may reject as non-responsive any Bid / proposal which it determines fails to comply with these Provisions.
- b. The Authority may request additional information from Bidders / proposers concerning their good faith efforts. All information requested by the Authority for the purpose of evaluating a Bidder / proposer's efforts to achieve the DBE participation goal must be provided within three (3) calendar days.
- c. Actions which constitute evidence of good faith efforts to meet a DBE participation goal are outlined in 49 CFR Part 26, Appendix A.



- d. In a negotiated procurement, including a design-build procurement, good faith efforts will be determined consistent with the provisions of 49 CFR § 26.53(b)(3)(ii).
- e. If the Authority finds that the Bidder / proposer has not demonstrated good faith efforts to comply with these requirements, it shall propose that the Bidder / proposer be declared ineligible for award. In that case, the Bidder / proposer may request administrative reconsideration in accordance with 49 CFR § 26.53(d). Such requests must be sent in writing within five (5) calendar days of receiving notice of proposed ineligibility to: The Office of the General Counsel, Massachusetts Department of Transportation, 10 Park Plaza, Boston, MA, 02116.
- f. If, after administrative reconsideration, the Authority finds that the Bidder / proposer has not shown that sufficient good faith efforts were made to comply with the requirements of these Provisions, it shall reject the Bidder / proposer's proposal and may retain the proposal guaranty.
  - (e) **Failure of Bidder / Proposer to Participate.** Failure of any Bidder / proposer to participate in any proceeding applicable with respect to its Bid, after written request by the Authority may result in a determination that its Bid / proposal is non-responsive.
  - (f) **Amendment of Schedule of Participation by Disadvantaged Business Enterprises.** A Bidder / proposer may amend its Schedule of Participation by Disadvantaged Business Enterprises only when authorized to do so by the Authority and only in accordance with the requirements of 49 CFR Part 26 and Section 7.1.21 of these Provisions.

#### **7.1.20.7 Requirements and Procedures after Contract Award**

- (a) **General Provisions for Proposal and Approval of Subcontractors**
  - 1. The Authority retains the right to approve or disapprove of any or all subcontractors.
  - 2. If, pursuant to the subcontractor approval process, the Authority finds that a DBE subcontractor does not have sufficient experience or resources to perform, manage and supervise work of the kind proposed in accordance with the requirements of 49 CFR Part 26, approval of the DBE subcontractor may be denied. In the event of such denial, the contractor shall proceed in accordance with the requirements of this section and 49 CFR Part 26.
  - 3. After selection of the contractor and award of the contract, and before issuance of the Notice to Proceed, the contractor must provide a copy of an executed agreement for all DBE and non-DBE subcontractors to Contract Administration and the Government Compliance Unit in the Office of Diversity and Civil Rights.
- (b) **Compliance with Schedule of Participation by Disadvantaged Business Enterprises**



- The contractor shall utilize the specific DBEs listed in its approved Schedule of Participation of Disadvantaged Business Enterprises to perform the work and supply the materials for which each is listed unless the contractor obtains the written consent of the Authority's Office of Diversity and Civil Rights ("ODCR") as provided in these Provisions. Unless such consent is provided under these Provisions, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.
- The contractor's compliance with the DBE participation goal shall be determined by reference to the established percentage of the total contract price; provided, however, that no decrease in the dollar amount of a contractor's commitment to any DBE shall be allowed without the approval of ODCR.
- If the contract price is increased or the scope of work is changed, the contractor may be required to submit a revised Schedule of Participation of Disadvantaged Business Enterprises in accordance with these Provisions.
- In the event of the decertification of a DBE scheduled to participate on the contract for credit toward the DBE participation goal, the provisions of 49 CFR § 26.87 shall apply.
- The contractor shall notify the Authority immediately of any facts that come to its attention indicating that it may or will be unable to comply with any aspect of its DBE obligation under this contract.
- Any notice required by these Provisions shall be given in writing to: (1) the Resident Engineer; (2) designated Compliance Officer; and (3) the Assistant Director of Government Compliance, MBTA Office of Diversity and Civil Rights, 10 Park Plaza, Suite 3800, 3rd Floor, East Wing, Boston, MA, 02116.

(c) **Request for Revised Schedule of Participation of Disadvantaged Business Enterprises.** If, for reasons beyond its control, the contractor cannot comply with its DBE participation commitment in accordance with the Schedule of Participation of Disadvantaged Business Enterprises, the contractor shall submit to the Authority the reasons for its inability to comply with its obligations and shall submit, and request approval for, a revised Schedule of Participation of Disadvantaged Business Enterprises. If approved by ODCR, the revised Schedule shall govern the contractor's performance in meeting its obligations under these Provisions.

(d) **Termination of DBE by Contractor for Cause**

1. A contractor shall not terminate a DBE subcontractor or an approved substitute DBE firm without the prior written consent of ODCR. This includes, but is not limited to, instances in which a contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.
2. ODCR may provide such written consent only if it finds, for reasons stated in its concurrence document, that the contractor has good cause to terminate the



DBE firm. A contractor may not terminate a DBE subcontractor for convenience.

3. For purposes of this paragraph, good cause includes the circumstances identified in 49 CFR § 26.53.
4. Before transmitting to ODCR a request to terminate and / or substitute a DBE subcontractor, the contractor must give notice in writing to the DBE subcontractor, with a copy to ODCR of its intent to request to terminate and / or substitute, and the reason for the request.
5. The contractor must give the DBE five (5) business days to respond to the contractor's notice. The DBE must advise the Authority and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Authority should not approve the contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the Authority may provide a response period shorter than five (5) business days.
6. In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms.

(e) **Substitution of DBEs.** When a DBE subcontractor is terminated as provided in this section, or fails to complete its work on the contract for any reason, the contractor must make good faith efforts, as outlined in Appendix A to 49 CFR § 26, to find another DBE Subcontractor to substitute for the original DBE as detailed in 49 CFR §53.

(f) **Prompt Payment and Release of Retainage.** The contractor must promptly pay each subcontractor under this contract for satisfactory performance of its contract within ten (10) business days from the receipt of each payment the contractor receives from the Authority. The contractor further agrees to make payment in full, including retainage, to each Subcontractor no later than ten (10) business days after the Subcontractor has satisfactorily completed all of the work required under its subcontract. Failure to comply with this requirement may result in the withholding of payment to the Prime contractor until such time as all payments due under these Provisions have been received by the subcontractor(s) and / or referral to the Prequalification Committee for action, which may affect the contractor's prequalification status.

(g) **Joint Checks**

## **Policy**

The Authority recognizes that the use of Joint Checks may be a business practice required by material suppliers and vendors in the construction industry. A Joint Check is a two-party check issued by the contractor to a DBE subcontractor and a third party such as a Regular Dealer of material or supplies. The contractor issues the check as payer to the DBE and the third party jointly as payees to guarantee



payment to the third party for materials or supplies obtained or to be used by the DBE. FTA has established criteria to ensure that DBEs are in fact performing a commercially useful function while using a Joint Check arrangement. Contractors and DBEs must meet and conform to these conditions and criteria governing the use of Joint Checks.

In the event that a contractor or DBE subcontractor desires to use Joint Check, the Authority will require prior notice and will closely monitor the arrangement for compliance with FTA regulations and guidance. The Authority may allow a Joint Check arrangement and give credit to a contractor for use of the DBE where one or more of the following conditions exist:

- a. The use of a Joint Check is in fact required by this type of vendor or supplier as a standard industry practice that applies to all contractors and subcontractors (DBEs and non-DBEs); or is required by a specific vendor or supplier;
- b. Payment for supplies or materials would be delayed for an unreasonably extended period without the Joint Check arrangement;
- c. The DBE (or any of its sub-subcontractors) has a pattern or history of not paying a vendor or supplier within a reasonable time or has not established enough of a credit history with the supplier or vendor; and / or
- d. The presence of severe adverse economic conditions, where credit resources may be limited and such practices may be necessary or required to effect timely payments.

The Authority also may consider other factors, including without limitation:

- e. Whether there is a requirement by the contractor that a DBE should use a specific vendor or supplier to meet their subcontractor specifications;
- f. Whether there is a requirement that a DBE use the contractor's negotiated price;
- g. The independence of the DBE;
- h. Whether approval has been sought prior to use of a Joint Check arrangement;
- i. Whether any approved Joint Check arrangement has exceeded a reasonable period of use;
- j. The operation of the Joint Check arrangement; and
- k. Whether the DBE has made an effort to establish alternate arrangements for following periods (i.e., the DBE must show it can, or has, or why it has not, established or increased a credit line with the vendor or supplier).

Even with the use of a Joint Check, both the contractor and DBE remain responsible for compliance with all other elements under 49 CFR § 26.55 (c) (1), and must still be able to prove that a commercially useful function is being performed for the contractor.

### **Procedure**

The following procedure will apply if the Authority allows the use of a Joint Check arrangement.



- a. The contractor will submit requests for approval to the Authority, using the Authority's approved DBE Joint Check Arrangement Approval Form (Document 030), attached as **Form F: DBE Joint Check Arrangement Approval Form**, and any other relevant documents. Requests that are not initiated during the Bid / proposal process should be made in writing and comply with the procedure;
- b. The Authority's Office of Diversity and Civil Rights will review each request and render a decision as part of the approval process for DBE Schedules and Letters of Intent;
- c. Review and Approval will be project specific and relevant documents will be made part of the project contract file;
- d. Payments should be made in the name of both the DBE and the vendor or supplier; Payments should be issued and signed by the contractor as only the guarantor for prompt payment of purchases to the vendor or supplier. The payment to the vendor or supplier should be handled by the DBE (i.e., if possible, funds or the Joint Check should be processed by the DBE and sent by the DBE to the vendor or supplier);
- e. The Authority may request copies of cancelled checks (front and back) and transmittal information to verify any payments made to the DBE and vendor or supplier; and
- f. The Authority may request other information and documents, and may ask questions of the contractor, subcontractor and vendor or supplier prior to, during, and after the project performance to ascertain whether the subcontractor is performing a commercially useful function and all parties are complying with DBE Program policies and procedures as part of the subcontractor approval process.

#### 7.1.20.8 Sanctions

If the contractor does not comply with the terms of these Provisions and cannot demonstrate to the satisfaction of the Authority that good faith efforts were made to achieve such compliance, the Authority may, in addition to any other remedy provided for in the contract, and notwithstanding any other provision in the contract, use any of the sanctions available under federal law, including but not limited to 49 CFR §26, Massachusetts law or this contract, including by not limited to:

- A. Withholding monthly progress payments;
- B. Assessing liquidated damages;
- C. Disqualify the contractor from future Bidding as non-responsible;
- D. Retaining, in connection with final acceptance and final payment processing, an amount determined by multiplying the total contract amount by the percentage in Section 7.1.20.5 DBE Participation, less the amount paid to approved DBE(s) for work performed under the contract in accordance with the provisions of 49 CFR Part 26;
- E. Suspending, terminating or canceling this contract, in whole or in part, and call upon the contractor's surety to perform all terms and conditions in the contract;
- F. Referring the contractor for debarment proceedings pursuant to M.G.L. c. 29 § 29F and, as applicable, 2 CFR Parts 180, 215 and 1,200;
- G. Referring the matter to the Massachusetts Attorney General for review and prosecution, if appropriate, of any false claim or pursuant to M.G.L. c. 12, §§ 5A to 5O (the Massachusetts False Claim Act);
- H. Referring the matter to the USDOT's Office of the Inspector General, the United States Department of Justice or other agencies for prosecution under Title 18, U.S.C. § 1001, 49 CFR Parts 29 and 31, and other applicable laws and regulations; and



I. Assessing other sanctions consistent with 49 CFR Part 26.

**7.1.20.9      Further Information; Enforcement, Cooperation and Confidentiality**

- A. Any proposed DBE, Bidder / proposer, or contractor shall provide such information as is necessary in the judgment of the Authority to ascertain its compliance with the terms of these Provisions.
- B. Any proposed DBE, Bidder / proposer, or contractor must comply with 49 CFR § 26.107, which outlines the enforcement actions that apply to firms.
- C. Any proposed DBE, Bidder / proposer, or contractor must comply with 49 CFR § 26.109, which outlines the rules governing information, confidentiality, cooperation, and intimidation or retaliation.

**7.1.21      Terms & Conditions Signature**

**IN WITNESS WHEREOF, the Contractor certifies under the pains and penalties of perjury that it shall comply with these MBTA Terms and Conditions under Section 7.1 for any applicable Contract executed with the MBTA as certified by their authorized signatory below:**

**Contractor Authorized Signatory:** \_\_\_\_\_

Print Name: \_\_\_\_\_

(BLOCK LETTERS)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(check one) \_\_\_\_\_

Organization \_\_\_\_\_

Individual \_\_\_\_\_

<b>Full legal Organization or Individual Name:</b>			
<b>Doing Business As Name (If Different):</b>			
<b>Tax Identification Number:</b>			
<b>Address:</b>			
<b>Phone:</b>		<b>Fax:</b>	